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APPENDIX E

AR319718

1 VERBATIM SWORN STATEMENT

2 IN RE: DRAKE CHEMICAL SITE

3
4
5 STATEMENT OF: KURT DAVIS

6 TAKEN BY: EPA

7 DATE: MARCH 2, 1998, 6:10 P.M.

8 PLACE: SHERATON INN
9 ROOM 502
10 WILLIAMSPORT, PA 17701

11 APPEARANCES:

12 BY: MICK HARRISON, ESQUIRE
13 P.O. Box 467
14 Berea, Kentucky 40403
FOR - KURT DAVIS

ORIGINAL

15 BY: ROBERT J. MARTIN, OMBUDSMAN
16 US ENVIRONMENTAL PROTECTION OFFICES
401 M Street, S.W.
Washington, D.C. 20460
17 FOR - EPA

18 ALSO PRESENT: BILL SMEDLEY

19
20
21 NICOLE L. MATTERN
22 NOTARY PUBLIC
23
24
25

I N D E XBY EPAEXAMINATION

KURT DAVIS

By Mr. Martin

3

1 THE WITNESS: I'll tell you the truth as best
2 I know it.

3

4

EXAMINATION

5

6

BY MR. MARTIN:

7

Q We are ready to commence. For purposes of
8 the record, I am Robert J. Martin, National Ombudsman of
9 the United States Environmental Protection Agency. With
10 me here in this meeting are Mick Harrison, counsel for
11 Kurt Davis, the witness, and A.I.R. the Incinerator
12 Remediation. Bill Smedley is also present, the
13 president?

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MR. SMEDLEY: No. I am Chairman of the Air
Legal Committee.

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MR. MARTIN: Chairman of A-I-R Legal
Committee. And, of course, Mr. Kurt Davis, the witness.
What I would like to do is begin by having you describe
briefly, as you did previously, what your position was
at the Drake Chemical Site.

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24

A I was hired by the U.S. Army Corps of
Engineers in September, end of September 1996, in the
position of shift supervisor on the quality assurance
team.

25

Q Okay. And your employment was continuous

1 from that time until what time?

2 A With the Corps of Engineers, from that time
3 through October 22 or 23 of 1997. A 13-month term is
4 what I was hired on for. The duration -- the time that
5 I spent at Drake was through February of '97.

6 Q So you were present at the Drake Chemical
7 Site during the trial and risk burn portions of the
8 project?

9 A That's correct.

10 Q And you were present during that time as a
11 shift supervisor?

12 A That's correct.

13 Q For the Army Corps of Engineers?

14 A Yes.

15 Q Is there anything generally that you want to
16 speak to about your time with the Corps at the site
17 first, and secondly, your time with the Corps at the
18 site during the risk and trial burns?

19 A Okay. The trial burn is we're talking the
20 entire duration of from when they started operations of
21 the incinerator up through the completion of the last
22 risk burn.

23 And I guess I might as well start by
24 explaining my interview with David Modricker and Mike
25 Ogden, who were my superiors on the project. I sat down

1 at the interview process, prior to being hired, and
2 explained the concerns that if I would work on this
3 project, it was important to me, given the
4 responsibility of the quality assurance team shift
5 supervisor, that this all gets done right.

6 And they reassured me that that's why I would
7 be there if I were hired. And it looked like they were
8 in a position to say yes, you've got the job and
9 basically, I walked away from there and they said yes,
10 you got the job.

11 I worked the first week, I think, day shift,
12 and was handed a set of plans that covered most -- all
13 the aspects of the incineration process of the trial
14 burn remediation process.

15 Prior to coming onto the site, I had 40-hour
16 training for HAZWOPER training. And I came onto the
17 site, I worked day shifts and spent most of my time
18 reviewing -- going over the plans, trying to comprehend
19 the plans, becoming familiar with the staff, the
20 contractor staff and the incinerator control room and
21 operations.

22 I had been introduced to the site by who at
23 that time was my immediate supervisor, John Ricard, who
24 walked me through the hot zone, showed me the water
25 treatment plant and other areas of the site that needed

1 to be included pretty much in overall inspection
2 routine.

3 I discussed with David Modricker where I
4 would get the most comprehensive and fastest insight
5 into what was happening there. And we came to the
6 consensus to -- we agreed that to sit in the control
7 room was where you would find out the in's and out's of
8 what's happening with the process.

9 So that's where I spent most of my time, in
10 the control room with the OHM's -- the contractor's OHM,
11 two control room operators, incinerator operators.

12 And at this time, we're trying to -- they're
13 just getting ready to drop contaminated soil, feed
14 contaminated soil through the incinerator, through the
15 process. And they were shooting for 60 ton per hour.
16 That was the number they were trying to get to, at a
17 feed rate of 60 ton per hour.

18 And early on, it was discovered that to feed
19 60 ton an hour through the incinerator, they couldn't
20 get the ash up to a temperature where they would be able
21 to put it back in the ground as clean fill; they
22 couldn't remediate the ash, the contaminated soil, put
23 it back in the ground.

24 Q Take your time. Take a deep breath.

25 MR. HARRISON: We got time. Don't rush it.

1 MR. MARTIN: Relax as much as possible.

2 THE WITNESS: There was a lot of activity
3 going on at the site. Feed prep was busy trying to --
4 was hustling and running into difficulties at prepping
5 the feed to get it through the screeners; it was wet and
6 clumpy, and they had to assess which was the best
7 methods of screening it and getting it fed at that rate.

8 The incinerator had difficulty, as I said,
9 getting temperatures up to where it could effectively
10 remediate the feed. And it pretty much took every
11 effort that the feed prep could put together to keep the
12 feed rate going at that high rate.

13 And it wasn't very far into the project where
14 I said -- and it was pretty much the operators -- I'm
15 talking to controller and operators, I said, why are we
16 running 60 ton an hour through this thing when, first of
17 all, we have a really hard time keeping it coming and
18 it's not getting -- we're not getting success with the
19 operation to put it back into the clean zone, you
20 couldn't back fill with it?

21 So we're kind of creating a loop here. We're
22 taking from the zone, running it through and putting it
23 back in the zone.

24 BY MR. MARTIN:

25 Q What percentage, if I may ask, failed the

1 put-down requirement of the soils that were burned?

2 A All of it. Initially, all of it. If I'm not
3 mistaken, all of it and through the first -- I don't
4 know the time frame -- I might have to review the
5 records, it's been a year since I've been there; I would
6 have to review and find out when they finally did
7 successfully get ash that they could use for backfill.

8 And I continued to question why we -- why
9 wouldn't we stop this and produce -- and get the
10 temperatures to whatever we need to and the ash to get
11 them so we can put it back in the ground.

12 They had an excavation area on the site,
13 which was a clean area that they wanted to fill, and
14 they just couldn't -- they weren't getting there with no
15 good explanation to me why they would do that.

16 Q And if I may ask at this juncture, what was
17 the temperature required in the kiln of the incinerator
18 to meet the put-down rate successfully?

19 A I don't think that was determined. It was
20 determined that the temperature of the ash existing in
21 the kiln had to be 900 degrees to get it to successful
22 put-down criteria.

23 These numbers were given to me later. But I
24 think the people that were doing the project knew they
25 had to get to those ash temperatures. I got the

1 information later.

2 Q So the kiln temperature was not determined;
3 however, the ash temperature was determined?

4 A Right.

5 Q The ash temperature had to be 900 degrees?

6 A Right.

7 Q In your recollection, what was the ash
8 temperature?

9 A It varied. Initially, the temperatures and
10 the ash that came out varied considerably. There were
11 actually cold spots in the -- there was feed that pretty
12 much hadn't been heated coming out of the kiln, perhaps
13 heated, but not heated significantly or substantially to
14 raise the temperature anywhere near 900 degrees.

15 And the decision was made that we need to
16 modify the kiln to get this much feed into it. It would
17 lay thick on the bottom of the rotary kiln, and the
18 assumption was it was kind of sliding and laying a foot
19 or so thick in the kiln and going through so it wouldn't
20 be agitated enough to get the volatiles out of the
21 contaminated soil.

22 And a considerable amount of soil had been
23 run through; they shut the operation down and pulled
24 some refractory out of the kiln and installed some
25 lifters, which are kind of concrete; they were called

1 lifters.

2 And the purpose of those were to get the soil
3 lifted up and turn it up and agitate it more so it would
4 get a more even distribution of heat throughout the
5 feed, the soil in the kiln.

6 Q Was that an effective practice?

7 A When it was accomplished, when they -- when
8 we ran after that, there was an increase in carryover, I
9 think the term that's appropriate, of fly ash, of
10 particulate into the air pollution train, and there were
11 associated difficulties that carried on all down the
12 line in the process that had to be adjusted and dealt
13 with to meet with that additional carryover.

14 They had to increase the temperature within
15 the kiln. There were some modifications on the burners.
16 This is recollection as best as I can make it.

17 And it took quite a while to get these things
18 shook out to the point where they could -- and they
19 lowered the feed rate considerably to where they could
20 get a product that they could put back into the ground.
21 That was getting real close to the trial burn, I guess,
22 when they actually managed to do that.

23 Q So these problems occurred during the risk
24 burn or risk burns?

25 A Yeah, the problems occurred prior to the

1 actual risk burn and trial burn. And throughout the
2 risk burn and trial burn, I think there were some
3 difficulties in maintaining a steady state in that
4 process, steady state where things would line out and it
5 would hold the temperature throughout and hold a quench
6 flow throughout.

7 And then there were some upset conditions
8 that we encountered along the line. Upset conditions
9 shut off the feed, automatic waste feed. And for the
10 most part, my assessment is these interlocks worked as
11 they were designed to work. I think I need to say that.

12 But there were frequent and persistent
13 difficulties with that, getting it to where they wanted
14 it to be. And they kept striving for the maximum feed
15 rate to satisfy the contract or what they had bid on the
16 contract, what they said they could do initially.

17 My recollection is there was risk burn early
18 on, but I'm not sure of the dates, where their
19 subcontractor came up and did stack testing and --

20 Q Who was that subcontractor?

21 A MRI, Midwest Research Institute, I believe.

22 MR. HARRISON: Kurt, if I could interrupt.
23 Do you want to refer to the tables with the dates for
24 the risk burns and trial burns? I don't know if these
25 are correct. These are what EPA says are the dates.

1 THE WITNESS: This is in January. I think
2 there was one earlier on.

3 MR. HARRISON: They all should be there.

4 THE WITNESS: January, February.

5 MR. MARTIN: If I may interject for the
6 record, these tables are excerpted from --

7 MR. HARRISON: Trial burn reports from EPA
8 and risk burn reports.

9 MR. MARTIN: Trial burn and risk burn reports
10 from EPA.

11 MR. HARRISON: Correct.

12 THE WITNESS: And these are the two trial
13 burns and risk burns that were done on January 25.

14 MR. HARRISON: '97.

15 THE WITNESS: Through February 7 of '97. I
16 think there was an actual risk burn --

17 MR. HARRISON: Did they call it a mini burn?

18 THE WITNESS: A mini risk burn possibly done
19 early on.

20 MR. HARRISON: Like November?

21 THE WITNESS: I think in November. I'm not
22 sure of the dates.

23 BY MR. MARTIN:

24 Q These dates, however, are consistent with
25 your recollection of when the risk and trial burns

1 occurred?

2 A Right.

3 Q At the Drake site?

4 A Yes. That's a well-documented event there.
5 This is what sets the parameters that they would work
6 under. This data accumulated from these four runs or
7 four tests is what they assess and set parameters with
8 what they can run under with permit.

9 Q Are your recollections about the temperature
10 of the ash and the failure of the ash to meet the
11 put-down requirements recorded at all in your personal
12 logs or any other site document?

13 A Yes. OHM has got a pretty concise -- at one
14 point later on in the operation routinely sampled for
15 ash temperatures to get a handle on where they were at
16 with feed rate and temperatures in the kiln to give them
17 some room to back off or increase the temperatures in
18 the kiln to satisfy what they knew they needed to meet.

19 My question was then, and is still, why not
20 set -- if you know what ash temperatures you need to get
21 to, why not make that a basis for your operating
22 conditions? That's a question that wasn't answered.

23 Q Did you ask that question on the site during
24 your time there?

25 A Right. And I didn't have that information

1 until later on. I think it was Jerry Clayson.

2 Q Can you spell the last name, please?

3 A C-L-A-Y-S-O-N, a consultant with El Dorado,
4 possibly hired by the either the Corps of Engineers -- I
5 think by the Corps of Engineers to -- and I think Jerry
6 was there for probably the mini risk burn, which might
7 have been when I first met him and saw him subsequently
8 there for the trial and risk burns and assuming he did
9 his own report on the operation.

10 I think Jerry -- I think it was Jerry that
11 brought -- was it Jerry Clayson that brought some ash
12 samples in jars where they had done testing on the soils
13 in a smaller oven, a smaller oven or kiln and made the
14 determination that they had to get real close to 900
15 degrees consistently to be able to get the feed waste --
16 feed remediated to where they could put it back into the
17 ground.

18 Q Did you ever see his written report?

19 A I don't believe I had ever seen his written
20 report, no.

21 Q But you do recall discussing this problem
22 with him?

23 A Right. I recall him telling -- I recall
24 talking to Jerry about questioning the operation of
25 running this much feed through here and having to put it

1 back in the hot zone.

2 And he said -- I think that's when he told me
3 that they know they need to get close to 900 degrees on
4 this.

5 Q And in your best recollection, the 900-degree
6 requirement was not achieved?

7 A Consistently throughout until they got to
8 probably the trial burn. Well, very possibly before
9 that they had 900 degree temperatures.

10 MR. HARRISON: Bob, could we clarify just the
11 last answer for the record? I think the witness is
12 clear on what the answer was, but the record may not.
13 Were you saying that the 900 degree temperature in the
14 ash was consistently achieved or consistently not
15 achieved and for what period?

16 THE WITNESS: It was consistently not
17 achieved for an extended period up towards the trial
18 burn, I would think. Dates may be -- it might be better
19 to -- I don't know. I don't know what the dates are. I
20 can honestly say I don't know what the dates are.

21 But I'm thinking it was closer to December
22 when -- I'm assuming they were met when we were
23 achieving success with the feed and putting it back in
24 the ground; the sampling was coming out; they met the
25 criteria for beta-naphthylamine, BNA, and Fenac, which

1 were the two constituents that were driving the
2 temperatures, driving the entire requirement.

3 They were the most -- I guess the most
4 difficult to get out that they were sampling for. I
5 think that's accurate. That's my understanding of it
6 anyway.

7 MR. HARRISON: It's the ones they admit to?

8 THE WITNESS: Yeah. And I don't know where
9 to go. Where do we go from here?

10 BY MR. MARTIN:

11 Q I would like at this time to address the
12 issue of fugitive emissions from the Drake site. Were
13 you aware of any fugitive emissions from the site during
14 your tenure?

15 A I would like to clarify your statement of
16 fugitive emissions from the Drake site. I'm aware of
17 what I assess to be fugitive emissions from the process
18 to the degree that they very likely -- well, there were
19 fugitive emissions in the form of steam and vapors and
20 wet dust to the extent that they would cloud off the TDF
21 pad.

22 And whichever way the wind was blowing, they
23 would either deposit their -- a lot of the dust that was
24 laid in the steam on the sprung building, which is the
25 feed prep building adjacent to the kiln and wet ash

1 drag, which was the most visible, most evident
2 deposition of ash of dust.

3 I worked the third shift, the night shift for
4 the most part when I was out there. And the boys on the
5 pad would hose -- they would be out there hosing down
6 from underneath the quench.

7 And on a couple of occasions, by early
8 morning, they would come around and hose off the sprung
9 building. And this is when I was raising the issue of
10 fugitive emissions from the process.

11 I didn't make the determination that they
12 were fugitive from the site, but I didn't -- but I was
13 concerned, as is in that previous affidavit, we've got a
14 monitoring system on the perimeter of the site that
15 needs to do its job without question and to satisfy the
16 contract at least or you -- or I didn't feel comfortable
17 saying that there weren't fugitive emissions potentially
18 leaving the site. I mean, that's what that system was
19 to do.

20 Q I would like to discuss the air monitoring
21 system at a later juncture in this session. I would
22 like to return the issue of fugitive emissions. To
23 clarify, if I understand your statement correctly, you
24 did not personally see or you were not personally aware
25 of fugitive emissions from stockpiles on the site;

1 however, you did personally see fugitive emissions which
2 resulted from operation of the incineration unit?

3 A That's correct. Yeah, that is accurate.

4 MR. HARRISON: It may be accurate. I don't
5 think it's what he said. I don't know if he mentioned
6 he didn't see fugitive from the soil. Are you talking
7 about the soil stockpile?

8 MR. MARTIN: That's right.

9 MR. HARRISON: I don't know if we talked
10 about that. Did you say that tonight?

11 THE WITNESS: No, I don't know that I ever
12 said that.

13 MR. HARRISON: Okay. So since you haven't
14 said it, let's be clear. Have you seen steam or dust
15 coming off of the soil stockpile at the site?

16 THE WITNESS: The soil stockpile pretty much
17 I haven't -- I can say I haven't seen fugitive emissions
18 coming from the soil stockpile, not the -- I mean
19 there's vapors -- actually vapors and steam coming off
20 the ash pile that had been put back in the soil
21 stockpile. And those vapors came off the zone, and I
22 don't know where they went.

23 MR. HARRISON: That's an important
24 distinction.

25 BY MR. MARTIN:

1 Q So the ash which had failed the put-down
2 requirement --

3 A Right.

4 Q -- and was then placed on top of the
5 stockpiles on the site which were to be fed into the
6 incinerator, that ash which had failed the put-down
7 requirement was emitting vapors?

8 A Right.

9 Q Did you see any particular particulate matter
10 in the vapors that had approached the boundary of the
11 site; the fence line?

12 A No. No. I can't -- if you can see it, I
13 don't know how you assess that. The particulate matter
14 that I was most concerned about was billowing clouds of
15 steam coming off of the wet ash drag and the ash
16 handling -- bottom ash storage bins; those clouds of
17 steam were rolling constantly.

18 And that was my concern, we got a fugitive
19 emission happening within the process. And you can tell
20 me that there's contamination in the feed coming in and
21 there's still contamination in the ash that has to go
22 back in the zone; what's happening in between here needs
23 to be characterized before you can tell me that there's
24 not a problem here.

25 MR. HARRISON: And, Kurt, to be clear, when

1 you say what's happening in between, what are you
2 referring to?

3 THE WITNESS: In between is the process of
4 waste feed and taking it up to a temperature that's less
5 than optimum to remove the contaminants and running it
6 through the process, running it through the system.

7 And part of the process confused me or
8 concerned me. You would take the scrubber water, and it
9 would be blown down on the wet ash -- on the bottom ash
10 to -- I guess, two reasons.

11 One, to get rid of the scrubber water and
12 two, to aid in cooling the bottom ash, I guess.

13 MR. HARRISON: Kurt, just to be clear, if
14 scrubber water had not been used to cool the bottom ash,
15 or even if it was, was there another source of water
16 used to cool the bottom ash?

17 THE WITNESS: Yes, there's -- the scrubber
18 water was blown down into a tank by the wet ash drag,
19 and city water would be added to that scrubber water
20 when needed.

21 MR. HARRISON: Municipal water?

22 THE WITNESS: To blow down to moist, to wet
23 the bottom ash as it come out. And by not reaching
24 optimum temperatures and still having contamination in
25 the ash that had to be put back in the zone, I was

1 concerned that there -- there was concern for what
2 emissions were coming off the process.

3 MR. HARRISON: Before you guys go on, a point
4 of clarification.

5 BY MR. MARTIN:

6 Q I wish to return to the general issue of
7 fugitive emissions in a moment. However, I would like
8 to clarify at this juncture that you observed city water
9 from a municipal source being used to treat the ash;
10 please clarify?

11 A My understanding of the process is that
12 there's a tank, possibly a couple thousand gallon tank.

13 Q Was that a Klien tank?

14 A I don't know what a Klien tank is.

15 Q Okay. Go on.

16 A Situated back on the TDF pad next to the wet
17 ash drag where the scrubber water was blown down. And
18 it's my understanding that the capability is there to
19 add water to that tank, and I'm thinking it's clean
20 water, unless there's a source of water within the
21 process itself that would be added to that.

22 And if there is a source of water that needed
23 someplace to go, I'm assuming that's where it would go.

24 Q Did you see the water?

25 A No.

1 MR. HARRISON: Well, let's be clear. Did you
2 see the water where or when?

3 BY MR. MARTIN:

4 Q Did you see the water which was being used in
5 the process before it was used?

6 A There was an onsite city water tank, yes.
7 And the plumbing is there to get it back to where it
8 needs to go, as far as I understand.

9 Q Thank you.

10 MR. HARRISON: Excuse me, Kurt. I'm sorry.
11 The fugitive emissions issue, I just wanted to state for
12 the record, my understanding of the use of the term
13 "fugitive emission," as Kurt is using it, not
14 necessarily as EPA would choose to use it, and also I
15 believe Kurt's definition is consistent with mine, kurt
16 referred to an emission of vapor particular steam on
17 site when he saw it, referred to it as fugitive when it
18 would enter the atmosphere.

19 Whether or not it left site or whether or not
20 it could be observed leaving site, if it went into the
21 atmosphere and left the control of the operators, he
22 would consider it fugitive.

23 I also would consider it fugitive. I also
24 happen to think the law considers it fugitive at that
25 point. For certain regulations and other matters,

1 whether it leaves the site or not is not important. But
2 for others, it's fugitive even if it simply enters the
3 atmosphere. I just wanted to clarify that for the
4 record.

5 THE WITNESS: And my assessment of it being
6 fugitive, a fugitive emission was that it was an
7 emission from the process which I felt -- I was under
8 the understanding that it was to be enclosed, and for
9 all the right reasons, my assessment to alleviate the
10 potential fugitive emissions that were occurring.

11 BY MR. MARTIN:

12 Q Can we finish the municipal water issue at
13 this juncture? After the municipal water was used,
14 where was it recycled to?

15 A The municipal water, if it was used to add to
16 the blow-down water that would be used on the -- to
17 moisten the bottom ash, wet ash drag, if it were used,
18 it would be added to the tank which was contaminated --
19 had contaminated blow-down water from the scrubbers.

20 My understanding of the process is that any
21 process water could not be handled or treated in the
22 water treatment plant. The issue then being if there's
23 fugitive emissions that were washed back into the
24 lagoon, the lagoon is site water, contaminated water,
25 can process water which isn't to be treated as being

1 added to this site water which is to be treated.

2 Which would have been -- in my opinion, it
3 would have been not the way it was to be done, okay?

4 Q Okay. I understand that.

5 A Is that clear enough with the issue of the
6 city water? When there's water that they bring in that
7 they need to use in the process, once it's added to the
8 process, it becomes process water, and it's not to be
9 processed water -- it's my understanding that process
10 water is not to be treated in the water treatment plant.

11 MR. HARRISON: But to finish your answer to
12 Bob's question, I think he wanted to know what
13 ultimately happens to this water. After it's used,
14 where does it go?

15 BY MR. MARTIN:

16 Q Does the end point for the water result in
17 the lagoon or does it go --

18 A If it were operating -- wait.

19 MR. HARRISON: If you put it on the ash,
20 where does it go?

21 THE WITNESS: I would assume most of it is
22 going off in the air.

23 MR. HARRISON: As steam?

24 THE WITNESS: As steam. And it's carrying
25 dust particles with it.

1 MR. HARRISON: Did you ever see any leave the
2 ash conveyer, any liquid leave the ash conveyer?

3 THE WITNESS: Yeah, it's part of the process.

4 MR. HARRISON: Explain that to Bob.

5 THE WITNESS: The amount of flow that's
6 regulated onto the bottom ash, it has to be maintained
7 at a certain rate so it doesn't saturate the bottom ash
8 and wash through and drip on the TDF pad. And that
9 happens. I mean, that's happened -- that happened
10 consistently.

11 MR. HARRISON: When you say that --

12 THE WITNESS: The dripping, the amount of
13 water -- that's a sloppy operation. It's wet and
14 dripping. When you wet the bottom ash in your enclosed
15 conveyer and drop it onto the radial stacker, they
16 actually built a dam of -- kind of a dike -- on the pad
17 under the conveyer, the radial stacker to collect this
18 overage of water I suppose is --

19 MR. HARRISON: Coming off the ash?

20 THE WITNESS: Coming off the bottom ash.

21 MR. HARRISON: Where did that water go?

22 THE WITNESS: The water was eventually --
23 well, it continually -- I'm assuming it went back in the
24 lagoon. I can't swear that it went back in the lagoon,
25 but I don't know what else they would have done with it.

1 They contained it in that area as best they could. But
2 when it was full, they didn't bag it up and take it
3 away.

4 MR. HARRISON: Is there any disposal method
5 that you know of for spillage of water on site that's
6 been used in the process, other than putting it into the
7 lagoon in the water treatment plant?

8 THE WITNESS: No. Well, now wait. Let me
9 clarify that because if everything is working right, if
10 it gets placed on the ash and it is taken up in the ash,
11 that's where I'm assuming it was to stay. It's diluted
12 -- the concentrations are diluted throughout the bottom
13 ash which is remediated to the point where it could be
14 sampled, analyzed, and put back in as fill.

15 MR. HARRISON: When it works right?

16 THE WITNESS: When it works right.

17 MR. HARRISON: When it doesn't work right, is
18 there any other method for dealing with the water when
19 it doesn't work right?

20 THE WITNESS: When it doesn't work right, it
21 all goes back in the zone. It all goes back out -- the
22 ash fails, it goes back in the zone. The slop that
23 comes off on the pad, I'm sure finds its way -- I'm
24 relatively sure it all finds its way back into the
25 lagoon.

1 The fugitive emissions issue, if you want to
2 -- we'll expand on that, carries over to the quench
3 tower, the evaporative cooler.

4 BY MR. MARTIN:

5 Q I have one additional question before we
6 proceed further with that.

7 A Okay.

8 Q Was there any direct connection between the
9 city water treatment plant and site operations, such
10 that water that was used from the city could have gone
11 off site either treated or untreated to the plant, the
12 city water plant?

13 A Oh, no. No, the city water filtration plant
14 is in McElhattan. Are you confusing -- the city water
15 is the water that they draw from the supply line.

16 Q Uh-huh.

17 MR. HARRISON: You mean tap water?

18 THE WITNESS: And the water filtration plant
19 is the site water filtration plant, not the city water
20 filtration plant.

21 MR. HARRISON: Right. It's not POTW or
22 whatever those things are called.

23 BY MR. MARTIN:

24 Q So there is no, in your view, no connection
25 between the site itself and the city water treatment

1 plant or POTW?

2 A There's a connection, but it's a supply line.

3 Q Only a supply connection?

4 A Right.

5 Q Thank you.

6 MR. HARRISON: And where does the water go
7 after it's treated at your onsite treatment plant?
8 What's the discharge route?

9 THE WITNESS: The discharge is into a storm
10 drain that runs through the site and into Bald Eagle
11 Creek.

12 MR. MARTIN: Okay. Thank you.

13 THE WITNESS: I was confused on the city
14 water treatment plant.

15 MR. MARTIN: No, that's fine. I was
16 confused, and I wanted to make sure that was clarified
17 before we proceeded.

18 BY MR. MARTIN:

19 Q Back to the general issue of fugitive
20 emissions from the site, you did see vapors from
21 stockpiles on the site, and you also did observe
22 fugitive emissions which resulted from operation of the
23 incineration unit itself?

24 A Right. For the most part, the vapors on the
25 stockpile were on the -- reintroduced ash to the stock

1 -- to the --

2 Q This is ash that, shall we say, was going in
3 the second time around?

4 MR. HARRISON: Had to be reburned?

5 THE WITNESS: It was ash that would have to
6 come in another time, yes. And there was still heat
7 maintained in the ash when it was displaced back out in
8 the feed zone, in the hot zone.

9 BY MR. MARTIN:

10 Q Not 900 degrees kind of heat, but still hot?

11 A Hot enough to, you know, on a cold day in
12 January or December show steam.

13 Q Cause substantial vapor and steam?

14 A Substantial, not to the extent where it is as
15 it's coming off the bottom ash. But when you turn the
16 pile over or dump it off the truck, load it on the truck
17 and dump it off the truck, there's steam coming off of
18 it.

19 Q When you witnessed this steam, and when you
20 observed the fugitive emissions from the TDF pad, shall
21 we say?

22 A Right.

23 Q Did you inform other personnel on the site of
24 your observation?

25 A Yes, continually.

1 Q When you say continually, was that, would you
2 say, pretty much on a day-to-day basis?

3 A Day to day, every day that the plant was in
4 operation and the -- every day that the plant -- pretty
5 much every day that the plant was in operation, and I
6 filled out a shift report, I would -- there's a place in
7 the shift report for fugitive emissions that are noted
8 and observed.

9 And I made it a point to fill that in when I
10 observed fugitive -- what I assessed as fugitive
11 emissions. I was called on that.

12 Q Let me ask, did you turn in your shift
13 report, then, on a daily basis?

14 A Pretty much every day I was there, yes.
15 Pretty much every day I was there.

16 Q And you noted consistently the fugitive
17 emissions you observed in your shift report --

18 A Correct.

19 Q -- that you turned in virtually on a daily
20 basis?

21 A Right.

22 Q So you told other personnel on the site not
23 only what you saw orally, but you also made a written
24 observation --

25 A Right.

1 Q -- of what you saw?

2 A Right. And I was called on that by my
3 supervisors.

4 Q Can you tell me who they were, your
5 supervisors?

6 A The one that had the most impact and the one
7 that I'm sure of was David Modricker. I think John
8 Ricard brought the shift report to my attention, said
9 David wants to discuss this fugitive emissions with you.
10 And I carried it back to David and said this
11 is the way I see it. This is a fugitive emission. And
12 I was told that it's not to be -- it's not a fugitive
13 emission. And I don't know his exact words, but I was
14 told this was not a fugitive emission.

15 I mean, there was contention there. I said
16 this is -- the only way I can assess this is it's a
17 fugitive emission at least from the process. I mean,
18 that's what we're looking at here.

19 Q Let me ask you, why did you believe what you
20 observed was a fugitive emission?

21 A The reason I believed what I saw was a
22 fugitive emission was that this process was to --

23 Q Take a moment to think.

24 A Yeah, it's important. In my assessment, it
25 had the high potential for contamination being released.

1 That the condition -- all the conditions were right to
2 let this stuff vaporize to become volatilized if it had
3 not completely volatilized coming through the kiln not
4 meeting optimum temperatures.

5 If it comes out and is sprayed with scrubber
6 water, it was my common sense assessment that if you
7 take a chemical of concern that liquifies at 560 some
8 degrees, and you run it through a kiln to that
9 temperature and possibly slightly higher, it's not all
10 going to volatilize.

11 It may not all volatilize and be taken up in
12 the air pollution train. And when it's conveyed to
13 where it's into the open air once again, and there's
14 steam emitting from it, my common sense judgment was
15 there's a good chance that there's contamination coming
16 off in this steam and being given a medium to be carried
17 away with the dust, dust particles alone potentially.

18 Q If I may ask at this juncture, not only did
19 you see vapor, steam, therefore, coming off of the
20 incineration unit, did you --

21 A Off of the wet ash drag.

22 Q Off of the wet ash drag.

23 A Conveyances to the ash handling, the ash
24 storage, yes.

25 Q Okay. Did you also smell any odor?

1 A Yes. There was a very pungent dirt odor, for
2 lack of a better term. There was an instance where I
3 accompanied OHM's QC, quality control people to the top
4 of the wet ash drag where it dumps onto the radial
5 stacker.

6 You would sample the ash, you would have to
7 open a hatch and grab an ash sample. This is when we
8 were at Level C early on.

9 MR. HARRISON: What does that mean, for the
10 record?

11 THE WITNESS: Level C personal protection is
12 respirator -- have a filter respirator, Tyvek suit. And
13 I'm standing next to him when he's sampling this ash,
14 and steam is permeating out of the openings as it hits
15 the radial stacker.

16 And a burst of steam coming across our masks
17 broke through, penetrated the respirator. And the
18 report that I carried back to Dave Modricker was this
19 breakthrough was this sickening sweet aromatic that you
20 can smell on site when you're -- on a normal day's
21 operation, on a normal day's walk-around. I mean, it
22 was an aromatic. I mean, there was something there
23 that --

24 BY MR. MARTIN:

25 Q If I may ask, when you say it broke through,

1 did it break through your respirator in particular?

2 A Yes. Yes.

3 Q And the form of the breakthrough, was that a
4 rupture in the unit?

5 A No, it was steam -- it was explained to me
6 that the steam will penetrate your filters and carbon or
7 whatever. And once that happens, you're to leave and
8 change out your filters and report it, and that's
9 exactly what I did.

10 Q If I may ask, how quickly did the carbon
11 filter unit in the respirator unit become, for lack of a
12 better term, engorged?

13 A Broken through where I could notice it,
14 immediately. As soon as -- well, immediately as soon as
15 I had gotten a major burst of steam. Now, this is the
16 point in the wet ash drag where he's opening a hatch at
17 the top of the wet ash drag where it drops kind of in a
18 hopper to the radial stacker.

19 And for the most part, there's some degree of
20 enclosure, there's tarps over the radial stacker. A big
21 puff coming through that opening and coming around --
22 and it's consistently coming around that opening, you
23 can kind of avoid it.

24 There's double dumps that operate and kind of
25 surge this stuff through and not. So it's when they're

1 operating in one position, you'll have a moment to get
2 in there. And when they're not, there's a surge of wet
3 steam coming through.

4 And it was on one of those surges that we
5 were standing through several of them, that I had taken
6 a hit and it broke through on the respirators.

7 Q Are you familiar with a situation in which an
8 IDLH occurs, immediate danger to life and health on
9 site?

10 MR. HARRISON: The concept, you mean?

11 THE WITNESS: I'm familiar with the concept,
12 yes. I've never experienced one there to that regard.
13 Is that your question?

14 MR. HARRISON: Well, how do you know you
15 haven't experienced it?

16 THE WITNESS: Good question.

17 BY MR. MARTIN:

18 Q Did you have any physical effects after your
19 respirator unit was ruptured or the carbon filter was
20 fulminated?

21 A No, just this scent and taste of whatever was
22 there.

23 Q What did you do then?

24 A Which it subsequently became second nature
25 out there. This is why I was raging.

1 Q So if I may ask, this occurred more than
2 once?

3 A The first time it occurred, I carried it back
4 to David Modricker and said this is -- you know, I
5 explained the situation. And he carried it to health
6 and safety. And as far as what happened after that, I'm
7 not sure.

8 Eventually, they moved the sampling location
9 of the bottom ash to where it would alleviate the
10 problem.

11 MR. HARRISON: The problem of --

12 THE WITNESS: The potential problem of
13 breakthrough on your respirator. And here's what
14 happened subsequently; there was ongoing industrial
15 hygiene sampling taking place on the pad around the wet
16 ash drag in these areas that I'm concerned about, which
17 OHM's health and safety had undertaken.

18 And they acquired sufficient data for their
19 certified industrial hygienist to make an assessment and
20 to call for a downgrade on the level of protection
21 required for the pad.

22 And that was -- that's when I called and
23 asked Modricker to get someone to get us a second
24 opinion on this. This doesn't sit well with me at all.
25 And David said he's in touch with the Corps's certified

1 industrial hygienist and said he's coming. And he did
2 subsequently come.

3 MR. HARRISON: Kurt, pardon me. Before you
4 go on, explain what the downgrade was.

5 THE WITNESS: The downgrade was there was no
6 detection of beta-naphthylamine or I guess there were
7 four or five chemicals that they were sampling for and
8 analyzing for with draker tubes.

9 BY MR. MARTIN:

10 Q They were looking for as many as five major
11 contaminants of concern?

12 A I think --

13 Q The most significant one being
14 beta-naphthylamine and/or BNA?

15 A In my estimation, yes. And my understanding
16 is that they had non-detects.

17 MR. HARRISON: Who are the "they" you're
18 referring to?

19 THE WITNESS: The certified industrial
20 hygienist, health and safety on the site.

21 MR. HARRISON: Who works for?

22 THE WITNESS: OHM. And I asked Modricker to
23 call in someone that's going to give us a second
24 opinion, get a good chemist out here or get someone out
25 here that's going to be able to reassure me that this is

1 not as absurd as it looks to me.

2 MR. HARRISON: But hang on, Kurt. My
3 question was to clarify the downgrade you're talking
4 about; what would it mean for the worker in terms of
5 level of protection and equipment they would or wouldn't
6 wear for this downgrade to take place? What would be
7 the change?

8 THE WITNESS: The change was you no longer
9 need a respirator and for the most part, you no longer
10 need a Tyvek vehicle suit.

11 MR. HARRISON: I just wanted the record to be
12 clear about that.

13 THE WITNESS: The change was from Level C to
14 Level D.

15 MR. HARRISON: You could lose your
16 respirator?

17 THE WITNESS: Yes. And there were times when
18 they would -- if there was an operation going on on the
19 TDF pad, they would require a modified Level C if it was
20 wet conditions or something like that.

21 Or they would require a Level C if it was
22 inside the kiln operation where they would take and
23 break it apart or if the ash conveyer was open and
24 there's a dust condition, potentially, they would go to
25 a Level C for the people working in that area.

1 But for the most part, it went from Level C
2 to Level D and stayed there throughout. And I called --
3 after I had spoken with our industrial hygienist, who
4 came -- he finally came up, and there was a girl from
5 Baltimore that come up and was there for a week, and she
6 stayed on late the one -- she worked the second shift, I
7 think, the one evening, and I came in early, and we went
8 over and I walked her through the process and gave her
9 some insight on the incineration control room
10 operations.

11 And she expressed similar concerns as to -- I
12 mean, when she was there, there were times when the TDF
13 pad was foul, really foul smelling, burnt dirt smells,
14 et cetera, whatever -- the burnt dirt category is pretty
15 broad. I mean, it's a pretty nasty smelling operation.

16 And she expressed equally the concern that,
17 you know, it's ridiculous to be out there without a
18 respirator. And that's how I felt. And I felt that the
19 -- and I would go out there for a 15 or 20 minute trip
20 through the TDF pad and through the zone and go out
21 there every two hours and do the walk-around, but I
22 wouldn't have to be out there all that long.

23 And I thought for the guys that were out
24 there all night long, somebody is not taking this into
25 consideration. I mean, apparently -- and their

1 explanation was they were. They did eight-hour time
2 weighted averages on the sampling for industrial
3 hygiene.

4 And their certified industrial hygienist made
5 the call to lower the level of protection, based on the
6 data that they collected through those samples.

7 BY MR. MARTIN:

8 Q Your recollection, however, was that after
9 the downgrade of protective equipment from Level C to
10 Level D --

11 A Personal protective equipment.

12 Q Personal protective equipment from Level C to
13 Level D, the problem and exposure, certainly for
14 workers, persisted?

15 A Yeah, the potential exposure problem was
16 there throughout, yes.

17 MR. HARRISON: We probably should clarify.
18 You used the word "potential"; is that because workers
19 -- you're not sure workers contacted steam or dust or
20 vapor, or because you're not sure of the chemical
21 constituents of those?

22 THE WITNESS: Well, all of those things, I
23 think. I know they're on the pad, and if they're out
24 there -- the potential is there in my assessment and the
25 wet dust condition was there throughout, and they would

1 be -- what in my view was a non-successful
2 characterization of the components of that wet dust and
3 steam as it was coming off real time exposure, not a day
4 later or whatever, I was uncomfortable with simply OSHA
5 guidelines that said -- I was uncomfortable with their
6 decision to do that, to go there.

7 I was uncomfortable that they weren't in
8 Level B. Which maybe -- I mean, that's what I expected
9 to see. I read data; I had read information on the
10 chemicals concerned, and if we're trying to protect the
11 people on the project as best we can from potential
12 exposure to a carcinogen, you don't want them to be
13 exposed to, I would think at least in the feed prep,
14 they'd want to consider doing that.

15 BY MR. MARTIN:

16 Q And that carcinogen would primarily be BNA?

17 A Or -- yes, that's the only one I was -- I
18 mean, I'm sure there were several; toluene and there's
19 probably a list of others out there. The MSDS sheets
20 for beta-naphthylamine, even OSHA calls for a Level B.

21 Q In your recollection, were employees at the
22 site ever dressed out in Level B?

23 A I don't remember seeing anybody in Level B.
24 I think there were one or two instances when kiln dust
25 was introduced to the feed in the feed prep building to

1 help to aid in getting consistency, and to some degree
2 drying the feed to optimize what you're getting into the
3 kiln.

4 And I think there were -- I don't know if it
5 happened when I wasn't there, I think there might have
6 been a night when I wasn't or a day-shift episode where
7 they actually had action levels that required either to
8 evacuate, to leave Level C or to go to Level B. And I'm
9 not sure if they went to Level B or not. I don't know
10 for a fact.

11 Q Do you recall, therefore, an incident where
12 an evacuation may have been ordered or was ordered?

13 A I think there was one or two occasions where
14 health and safety had pulled the people out of the feed
15 prep because of volatile -- the VOC meter read higher
16 than the action level, which may have been 50 parts per
17 million. I'm not positive on that.

18 Q And to clarify for the record, on at least
19 one occasion your respirator unit was compromised, was
20 ruptured?

21 A I experienced breakthrough.

22 Q You experienced breakthrough?

23 A Right.

24 Q Were there any other occasions when that
25 occurred?

1 A No.

2 Q Were you aware of any other occasions when
3 that occurred for other personnel on the site?

4 A I don't know that it was ever reported by
5 other personnel. The QC that I was with, in my
6 estimation, experienced breakthrough and would follow
7 health and safety and routinely change it out. He's
8 also to routinely report it. I don't know if you'll
9 find -- I don't know if you'll find that documented.

10 Q Was this a QC person on your shift?

11 A Yes.

12 Q Was this a person who reported to you or who
13 was a colleague of yours?

14 A Right, he was a colleague.

15 Q So there may have been other instances in
16 which respiration units were compromised but not
17 reported?

18 A That's very possible, yes.

19 Q Did you report the breakthrough in your unit?

20 A Yes, to David Modricker, who in turn went
21 with me to health and safety and expressed the concern.

22 Q Did you report both orally and in writing the
23 breakthrough of your respiration unit?

24 A I don't know that it was documented. I would
25 assume health and safety documented the incident. I

1 don't know that I documented it.

2 Q After you had reported the breakthrough in
3 your unit to Mr. Modricker, he took corrective action?

4 A He carried the information to health and
5 safety with me and made them aware of it. And it
6 probably -- I don't know, but it probably wasn't long
7 after that that the certified industrial hygienist
8 downgraded the level of protection required on the pad.

9 Q And what was the reason given for downgrading
10 the level of protection from Level C to Level D near the
11 pad?

12 A They ran the required OSHA sampling events
13 and had analyticals back with non-detect. There was
14 nothing -- there's not a problem there.

15 MR. HARRISON: They said.

16 THE WITNESS: Their assessment to the data
17 that they compiled from their sampling gave him
18 justification in lowering the level of protection
19 because there was no detection of chemical concern to me
20 at that point, and to them also, beta-naphthylamine that
21 was in -- I suppose in OSHA's guidelines a problem for
22 workers.

23 MR. HARRISON: How did you feel about that?

24 THE WITNESS: I was raging. I was raging.

25 MR. HARRISON: Why?

1 THE WITNESS: Because I'm thinking these guys
2 -- I'm out here with the understanding that we're going
3 to be able to keep this a clean process so I don't have
4 to deal with this concern, first of all.

5 And when it's not cleaned, if -- I repeatedly
6 asked them to give me a sample and analyticals on the
7 steam to show me what numbers there are there. I mean,
8 if it's less than OSHA, that's fine to some degree.

9 But if I'm out here thinking that I'm going
10 to not be exposed to any more than .0001 parts per
11 million, which is where I wanted to be, then that's what
12 I needed to -- I needed someone to assure me of that.

13 I mean, I needed to be able to assure the
14 boys that were working with me and the QC and the boys
15 on the pad that that's, you know, this is a pretty safe
16 clean operation at that point.

17 MR. HARRISON: So why weren't you assured by
18 the OSHA tests they did? Did they test the steam, the
19 OSHA tests?

20 THE WITNESS: They couldn't adequately sample
21 and test the steam.

22 MR. HARRISON: They told you that?

23 THE WITNESS: They told me that. They told
24 me that. The pumps -- the draker tubes and the pumps
25 running air through the draker tubes couldn't be placed

1 right in the steam because the pumps would fail; and
2 therefore, it was kind of the perimeter of this major
3 portion of the steam which would kind of wave down
4 across the pad, and I was uncomfortable that they
5 couldn't adequately sample the area that I was concerned
6 with, what I was concerned with.

7 BY MR. MARLIN:

8 Q So the assurance from site management that
9 the emissions coming off of the TDF pad were not a
10 threat to workers and did not exceed the OSHA limit or
11 standard --

12 A I was told by my supervisors that they were
13 not emissions.

14 Q For the record, your supervisor informed you
15 that what --

16 A These are not fugitive emissions.

17 Q What you had seen and what you had smelled
18 and what in one case had ruptured your respiration unit
19 was not a fugitive emission?

20 A Right.

21 MR. HARRISON: Bob, there's an issue about
22 the respirator that Kurt is probably assuming everyone
23 knows, but it isn't known on this record, and that is
24 when the downgrade happened on the personal protective
25 equipment from Level C to Level D, it was done by OHM

1 for OHM workers on the TDF pad.

2 It was not initially done for Army Corps.
3 You need to tell Bob for the record what happened in
4 terms of your right per option to wear respirators when
5 this downgrade happened.

6 THE WITNESS: Are we ready? It was the
7 certified industrial hygiene testing and sampling and
8 analyticals that was done for everybody working on the
9 pad.

10 MR. HARRISON: By OHM?

11 THE WITNESS: By OHM. And we were partners
12 in this operation; and therefore, it applied to us as
13 well. I asked Modricker to get us some backups for it,
14 get us a second opinion on this.

15 And he called in our certified industrial
16 hygienist from Baltimore, who may have been somewhat
17 unfamiliar with hazardous waste at site operations, I
18 don't; I don't know.

19 But he came, and he walked around the site
20 and saw the operations and sat in on kind of an inhouse
21 quality assurance office meeting with me and my staff
22 initially.

23 And I expressed the concerns, I expressed the
24 concerns about taking -- not running at optimum
25 temperatures and persistent fugitive emissions, as I had

1 seen them, and having to deal with this day in and day
2 out with the knowledge that their OSHA testing was
3 ongoing and the IH testing was ongoing and they
4 justified that downgrading. And initially, he was of --
5 the information was if you feel you're out there and
6 need to be out there -- your job requires that you're
7 out there and if you feel the need to wear a respirator
8 when you go out there, you should wear one.

9 And your staff, if they feel the same, should
10 wear one. This was later refuted by our supervisors
11 that -- I don't know which came first. I think it was
12 initially at a supervisors meeting with OHM, I'm not
13 sure of the timing here, but these are two events that
14 happened.

15 I sat in on an 8:00 supervisor's -- working
16 night shift, I sat in on an 8:00 which is held in OHM's
17 office, and it was the practice of me and the staff that
18 worked with me on the night shift to do our rounds
19 through the hot zone, through the ash handling, through
20 the fly ash handling in the required Level C protection.

21 The water treatment plant was in the hot
22 zone, but it's a modified Level C inside the water
23 treatment plant. So the boys that are in there all
24 night long and come out just to take a break are in
25 modified Level C.

1 We're going through the zones, the hot zone
2 and passing through, inspecting the water treatment
3 plant briefly on our way through just to see if it's
4 operating and what's operating and perhaps what capacity
5 the discharge tanks are approaching.

6 And it was my habit not to take my respirator
7 off, not to -- because you got your gloves on, and to
8 take your respirator off, you got to take off some of
9 your gloves, deal with your hard hat and deal with your
10 respirator, and there's potential for contamination if
11 you're out playing in the feed prep, not playing, but
12 dealing with the feed prep and ash handling facilities,
13 you've got dirt on you.

14 And I didn't want to -- there's no decon, so
15 to speak, coming into and exiting the water treatment
16 plant. So it was my practice and the boy that worked
17 with me on that shift if he was walking with me, to
18 leave our respirators on and go through the water
19 treatment plant and look at things and move on.

20 This was OHM's -- I'm not sure what -- if he
21 was project manager, I'm not sure what title he goes by,
22 made an issue of this with the Corps of Engineers, Dave
23 Modricker in particular, that I shouldn't do this, that
24 I was to take off my mask when I came into a modified
25 Level C zone.

1 BY MR. MARTIN:

2 Q And why were you told to do that?

3 A Because it would -- there was difficulty
4 communication-wise with the people in the water
5 treatment plant and it would compromise the confidence
6 in the level of protection that they were being afforded
7 if we wore masks, wore respirators, and they were there
8 all night long without them.

9 MR. HARRISON: It would be a perception
10 problem?

11 THE WITNESS: Yeah, it was a perception
12 problem.

13 BY MR. MARTIN:

14 Q Did anyone say that would create a perception
15 problem?

16 A Yes.

17 Q Who said that?

18 A The same one that complained that I was doing
19 this, that I was not following the required level of
20 protection procedures.

21 MR. HARRISON: Do you know who that was?

22 THE WITNESS: It was Rick Santucci. Rick
23 Santucci is -- I don't know what his title is.

24 MR. HARRISON: One of the senior managers in
25 OHM?

1 THE WITNESS: Yes. And it was pretty much
2 impressed upon us that we would follow OHM's example as
3 to what level of protective equipment we wear and follow
4 the procedures at that point.

5 To get back to our certified industrial
6 hygienist, I don't know the sequencing here, but he said
7 to wear our respirator whenever you felt the need to; it
8 made perfectly good sense.

9 But again, subsequently, it was -- the
10 decision was made that that's not the position we would
11 take. We would follow OHM's guidelines of protective
12 equipment.

13 MR. HARRISON: What does all this mean for
14 you being required to wear respirators after this point?
15 Could you wear a respirator when you wanted to on the
16 TDF pad after that downgrade and this conversation?

17 THE WITNESS: No, not unless -- unless it was
18 -- they change the level of protection that was
19 required. We had to follow OHM's --

20 BY MR. MARTIN:

21 Q So if OHM did not wear --

22 A A respirator.

23 Q -- you did not?

24 A Right.

25 MR. HARRISON: So it wasn't just the water

1 treatment plant?

2 THE WITNESS: No.

3 MR. HARRISON: It was the TDF pad generally?

4 THE WITNESS: It was the project overall.

5 BY MR. MARTIN:

6 Q It was the site operations in general?

7 A Site operations, right.

8 Q If I could ask a couple more questions, and
9 then after that, we'll take a five-minute break or so
10 before we get into the general issue of the air
11 monitoring system.

12 A Okay.

13 Q But to close out on the fugitive emissions
14 issue, you saw and smelled fugitive emissions on the
15 site and in one case your respiration unit had ruptured.
16 On more than one occasion, I believe, correct me if I'm
17 wrong, you advised other personnel, including site
18 managers, of fugitive emissions on the site, and you
19 were told that there were no fugitive emissions?

20 A I was told that these were not considered
21 fugitive emissions. I was told that the space on the
22 shift report that was developed, that I helped develop,
23 was that these emissions, the wet dust and the spills
24 under the quench were not to be assessed as fugitive
25 emissions.

1 And I think that -- and I'm not positive, but
2 I'm thinking the rationale was that they're not leaving
3 the site.

4 Q Were you ever told directly what the
5 rationale was?

6 A If I was --

7 Q Take a moment to think.

8 A If I was, that's what it was. The rationale
9 was that these, you know, these are not leaving the
10 site. My concern was process fugitive emissions.

11 Q And why were you told that they were not
12 leaving the site? On what basis was that conclusion
13 reached?

14 A The perimeter monitoring says this isn't
15 happening. There's not a problem there.

16 Q Okay.

17 MR. HARRISON: Before you take a break, Bob,
18 there are two fugitive issues you might want to touch
19 on. One is the quench, and I don't know if you've
20 actually stated for the record today what comes out of
21 the quench and what's supposed to come out of the quench
22 in your experience.

23 BY MR. MARTIN:

24 Q Before you reply to the question on the issue
25 of the quench, the fugitive emissions you personally

1 noted, did you record your observations in your shift
2 report?

3 A Yes.

4 Q Did you also record your observations in --
5 did you have a personal logbook?

6 A Yes.

7 Q So you recorded your observations both in
8 your shift reports and in your personal logbook?

9 A Yes. Perhaps not as -- on my shift report, I
10 tried to -- every chance -- it was a persistent problem.
11 It was ongoing -- in my eyes, in my estimation, it was
12 an ongoing fugitive emission.

13 When I was told that this is not a fugitive
14 emission, this doesn't need to go down in this section
15 of this report, this shift report, I don't know if there
16 was a time there why I just didn't do shift reports or I
17 don't know if I stopped making those observations.

18 I'm thinking I persisted, and I know I didn't
19 let up on the personal pursuit of sample the steam, tell
20 me -- characterize -- tell me what's in this steam, give
21 me a number, instead of saying it's less than what OSHA
22 says you're allowed to be exposed to.

23 Q And who told you there were no fugitive
24 emissions?

25 A David Modricker explained to me that these

1 were not to be -- these are my words, I don't recall
2 exactly what he said, but these are not to be assessed
3 as fugitive emissions.

4 Q Let me ask you another question; were there
5 compilations of your shift reports done on a daily basis
6 for site operations?

7 A Yes.

8 Q And what were they called? What was that
9 called?

10 A The daily --

11 Q The daily report?

12 A Daily report, right.

13 Q Did the daily reports reflect your recorded
14 observations of fugitive emissions at all?

15 A I don't think so.

16 Q Did you ever read a daily report from the
17 site?

18 A That showed a fugitive emission?

19 Q That showed a fugitive emission?

20 A No.

21 Q Do you have --

22 A Did you? Did you?

23 Q No, I have not yet reviewed the daily
24 reports.

25 A Okay.

1 Q Do you have in your possession, perhaps not
2 here but in your residence, your logbooks and/or copies
3 of your annotated shift reports?

4 A I don't have any annotated shift reports. I
5 kept a log, kind of a personal log of activities and
6 important issues that I wanted to address, perhaps the
7 following day, or to follow up on that were pretty much
8 to keep me in line and so I could recall what was
9 important for the most part.

10 Initially, I would take my personal log and
11 copy it and attach it before an actual shift report was
12 developed and attach it to data sheets that were
13 accumulated sometimes hourly, sometimes every couple of
14 hours if the plant wasn't operating every four hours on
15 the operating parameters set out for the incineration,
16 for the kiln.

17 I would attach my notes to that data sheet
18 for my shift and that would be compiled by John Ricard
19 or someone on day shift who would do the daily report.

20 Q So you do have your personal logbook?

21 A I've got some, right. I've got some of my --
22 yes.

23 Q Who prepared the daily report for the site
24 operations?

25 A I think for the most part, John Ricard.

1 Q Did any daily report ever note, for example,
2 the situation in which your respirator was ruptured,
3 compromised?

4 A Not that I know of.

5 Q Did you note that in your shift report when
6 that occurred?

7 A I can't recall. I don't know. I can't
8 recall.

9 Q But you did speak of it to Mr. Modricker?

10 A I carried it to David, which was the most
11 direct way of me getting information and results.

12 Q I understand.

13 MR. MARTIN: Why don't we take a five-minute
14 break?

15 MR. HARRISON: Before we do, and if you don't
16 want to interpret these points -- I mean, this is your
17 time, but there are other, as I noted before you asked
18 these questions, some other fugitive-related issues we
19 can get at after the break. Do you want me to do them
20 or not?

21 MR. MARTIN: Yeah.

22 THE WITNESS: Yeah, they're worth touching
23 on.

24 MR. MARTIN: I would invite you to do that.
25 We're going to take a -- let's say we will take a

1 ten-minute break. We're now off the record.

2 (A recess was taken from 7:42 p.m. until 8:10
3 p.m.)

4 MR. MARTIN: After about a 15-minute break,
5 we are ready to proceed with further statements
6 regarding the Drake Chemical Site by Mr. Davis.

7 THE WITNESS: And we're going to continue
8 with the fugitive emissions issues? I don't know if I
9 even listened to what you just said. You just said
10 we're back on --

11 MR. HARRISON: We won't forget the story.

12 MR. MARTIN: So you want to address several
13 fugitive emissions?

14 MR. HARRISON: A few points.

15 MR. MARTIN: Several points relating to
16 fugitive emissions?

17 MR. HARRISON: Precisely. This is not my
18 information. This is Kurt's information. He just
19 hasn't fully explained it, and I thought you might
20 benefit.

21 MR. MARTIN: All right. Go ahead.

22 MR. HARRISON: Kurt, explain to Mr. Martin
23 the emissions, if any, of liquid or solids from the
24 quench that you've observed and also explain the normal
25 functioning of the quench and what should or should not

1 be emitted.

2 THE WITNESS: My assessment of the process is
3 that if what's to be enclosed in the process escapes,
4 that in my estimation is a fugitive emission. And in
5 the air pollution train, right after the secondary
6 combustion chamber, there's an evaporative cooler, the
7 quench tower, and there was difficulty with maintaining
8 an effective flow-through for the quench nozzles to
9 bring the temperature from 2,000 degrees out of the
10 secondary -- roughly 2,000 degrees out of the secondary
11 to less than 500 degrees before it enters the bag house.

12 A real critical point in the process, if the
13 temperature is higher than that, there's an interlock --
14 if the temperature is higher than 490 to 500 degrees,
15 there's an interlock going into the bag house.

16 If the temperature is that high going into
17 the bag house, there's an interlock which will shut off
18 waste feed and open the thermal release valve, TRV.
19 Persistent difficulty getting quench flow to where it
20 would effectively reduce the temperature without
21 creating a wet bottom on the quench.

22 MR. HARRISON: What is a wet bottom?

23 THE WITNESS: A wet bottom is the water is
24 not evaporating completely to the extent where it floods
25 the bottom of the quench. It washes into the conveyance

1 system on the bottom of the quench tower which is to
2 pick up some particulates, fly ash, and that would slop
3 onto the TDF pad.

4 That in my assessment was a fugitive
5 emission. And I think I documented it in my shift
6 reports frequently. And it was then routinely washed
7 into the sump pump on the TDF pad and pumped back into
8 the lagoon and the zone.

9 MR. HARRISON: Where did that water
10 eventually go from the lagoon?

11 THE WITNESS: The water was then treated as
12 site water.

13 MR. HARRISON: By?

14 THE WITNESS: In the water treatment plant on
15 site. And I'm trying to make them adhere and comply
16 with the contract. The contract won't let them treat
17 process water.

18 MR. HARRISON: In the water treatment plant?

19 THE WITNESS: Indirectly, my assessment was
20 this is what's happening here. We're not meeting what
21 we need to meet here. That was one area.

22 MR. HARRISON: Do you want to mention the
23 original design for controlled wet dust that you
24 observed in a drawing and to what extent it was
25 implemented?

1 THE WITNESS: Construction drawings, contract
2 drawings, some that I've reviewed showed a wet dust
3 collection system that was circled, clouded we would
4 call it, and a note that there was a hold or to put on
5 hold.

6 MR. HARRISON: What was the purpose?

7 THE WITNESS: The purpose of the wet dust
8 collection system was to alleviate the potential for
9 fugitive emissions from the wet dust and steam from this
10 conveyance.

11 MR. HARRISON: Including from the ash?

12 THE WITNESS: Including from the ash. The
13 original design of the operation was -- the reason the
14 radial stacker was there, this is like a conveyer belt
15 on wheels that was designed to rotate on radius and dump
16 the bottom ash into the appropriate one of six or seven
17 bins that were laid out on the radius.

18 That was not done. I don't know what the --
19 I don't know why, but it wasn't done. When I got there,
20 there were -- there was a straight row of ash, bottom
21 ash handling storage bins and radial stacker dumped
22 right into the middle of them, which eliminated any
23 possibility of -- I mean, it created a problem to deal
24 with wet dust that comes both off the ash when it's
25 deposited in the ash storage bin and the conveyance

1 system to get it there.

2 Those are engineering controls that I
3 thought, and I'm sure some people think in hindsight,
4 would have made good sense. I would think some people
5 would think in hindsight would have made good sense.

6 MR. HARRISON: After explaining exactly what
7 that wet dust control system would have done with steam
8 coming off the ash, had it been implemented as designed,
9 where would the steam have gone?

10 THE WITNESS: I'm not positive. It would
11 have gone one of two places, I suppose. I think back
12 into the air pollution train, prior to the secondary
13 combustion chamber where any residual --

14 MR. HARRISON: Organics?

15 THE WITNESS: Organics or whatever would have
16 been dealt with through the secondary combustion and on
17 through the process in the scrubber. That didn't take
18 place. That wasn't there. And it was a question. I
19 said who put this on hold? And there was no -- I didn't
20 get an answer.

21 MR. HARRISON: So there was an initial
22 design, a system designed to control steam off the ash,
23 preventing it from escaping into the atmosphere and send
24 it back through some aspect through either the
25 combustion process or air pollution control or both?

1 A Right.

2 MR. HARRISON: It wasn't implemented?

3 THE WITNESS: Right.

4 BY MR. MARTIN:

5 Q Were you told at all why not?

6 A No.

7 MR. HARRISON: That's enough for me for the
8 moment for the fugitive emissions.

9 THE WITNESS: And one other thing that was a
10 concern of mine when I was out there with respect to the
11 air permit and the potential fugitive emissions. The
12 sprung building is under negative pressure. It's to be
13 maintained under negative pressure.

14 This is the feed prep building where all of
15 the site soils are screened and moved around and
16 delivered to the incinerator. There's an air handler in
17 there outside of that building that draws the air out
18 and into a charcoal filter type piece of equipment, two
19 banks of charcoal filters, some HEPA filters on the
20 sprung building wall, and a fan to draw the air from the
21 sprung building and into the HEPA filter equipment
22 container, the carbon filter, excuse me, equipment and
23 out the top, out a vent at the top.

24 There was maintenance required on both the
25 filters, the HEPA filters to -- that drew the air

1 through from the sprung building into the charcoal
2 canisters, the charcoal filter, and there's a
3 maintenance schedule provided by the manufacturer of the
4 charcoal filters themselves that required sampling of
5 the charcoal itself to determine at what point it was
6 saturated.

7 OHM set up a -- and it was in the air permit,
8 it was a measurement through a conduit tube, a piece of
9 tubing that ran the length of the structure and turned
10 into the exhaust port at the top.

11 This is beyond all the charcoal filtration
12 where they would open a valve and with the PID, I think
13 it's a PID instrument, it reads volatile organic
14 compounds in parts per million.

15 And the criteria was that if -- I'm not sure
16 of the numbers, but if it read five parts per million to
17 ten parts per million, it was to be checked. It was to
18 be checked daily and measured daily.

19 And if it were to read above, I think, ten
20 parts per million, it was to be checked further or
21 sampled further. And I raised some questions on the
22 accuracy of sampling and analyzing through that -- the
23 length of that tube with the hand-held instrument and
24 questioned if we could require the contractor to sample
25 the carbon to both determine its point of saturation,

1 its percentage of saturation and what constituents were
2 in there.

3 I mean, we're reading parts per million, but
4 we didn't know what. And actually, what the log
5 routinely showed was no reading coming out of that
6 sample port.

7 MR. HARRISON: A non-detect?

8 THE WITNESS: Well, it's a PID, so it noted
9 -- one or two parts per million, I think, it might have
10 read at the most. On a couple of occasions, on my night
11 shift, I got together with the health and safety officer
12 who carried the PID instrument and we sampled that port,
13 and we got higher than ten parts per million.

14 It was above an action level, in my
15 assessment, and it would require further sampling.

16 BY MR. MARTIN:

17 Q How did you do that sampling?

18 A We did it with the same -- to my
19 understanding, the same as the day shift health and
20 safety people, QC people sampled, with a hand-held PID.
21 And that was part of the concern.

22 It's are we sampling it routinely wrong to
23 not get a reading, or are we sampling it adequately to
24 get an accurate reading? Either way, the question is
25 the same, are we doing the most we can here to assure

1 that this doesn't need to be -- we don't need to sample
2 the charcoal?

3 Q Because you did find a disparity?

4 A Right. And it could have been my reading.
5 It could have been the time we went out, we may have
6 read it inadvertently, introduced something that would
7 read volatiles, and I just needed -- I wanted someone to
8 follow up on that. I had difficulty getting that -- I
9 never got that accomplished.

10 But they routinely sampled every day and came
11 up with non-detects. There's a differential pressure
12 meter that reads the pressure coming into the canister
13 and the pressure going out of the canister.

14 And when it's pegged at six, it's not
15 operating effectively in my assessment. The explanation
16 to me was, there's a pre-filter, a screen on the bottom
17 sides of both of those charcoal beds that would get
18 clogged up; and therefore, you get a differential
19 pressure.

20 And I don't know what the resolution was with
21 that, but it's something that I thought needed further
22 attention. I thought simply to maintain the
23 manufacturer's required sampling at that point would
24 make more assurances that there's not a problem coming
25 out of the top.

1 MR. HARRISON: Coming out of the top would
2 basically be the vapor being emitted into the
3 atmosphere?

4 THE WITNESS: Right.

5 MR. HARRISON: From the building.

6 BY MR. MARTIN:

7 Q Was there more than one occasion when you
8 sampled with the hand-held PID instrument or was that a
9 single occasion?

10 A One occasion with the PID that I can recall.

11 MR. HARRISON: You probably should move to
12 your story on the monitoring. We are running out of
13 time.

14 BY MR. MARTIN:

15 Q Please go ahead.

16 A All these concerns for adequately sampling
17 what we're dealing with on the pad relate to concerns
18 for fugitive emissions in light of the perimeter air
19 monitoring system that was set up to read for certain
20 organic -- volatile organic compounds.

21 And MRI's monthly reports that I
22 subsequently, after my first few weeks there got to
23 review, clearly stated that they weren't getting what
24 they had set out to get. They weren't meeting their
25 contract requirements is the way I understood this.

1 MR. HARRISON: Regarding?

2 THE WITNESS: Regarding recovery of a
3 surrogate, 4-aminobiphenyl, which was used to give
4 information on what beta-naphthylamine would show up as.

5 MR. HARRISON: In the perimeter monitoring.

6 THE WITNESS: In the perimeter monitoring.
7 And percentages of recovery were much lower than they
8 wanted and were much lower than they would be able to
9 quantify the numbers that they were trying to get.

10 MR. HARRISON: For BNA.

11 THE WITNESS: For beta-naphthylamine.

12 BY MR. MARTIN:

13 Q When did they become aware of this problem?

14 A MRI had this in their reports from July, I
15 think, and possibly whenever -- I think when they
16 started the operation, they had reports pointing out
17 that they're having difficulty getting recovery and
18 quantifying numbers that would get them to the detection
19 limit set out in the contract.

20 This was a concern to me, and I carried it to
21 Modricker, to David Modricker and said what's happening
22 here? What's going on, you know, is this -- this isn't
23 good news. Is this good news? Is this bad news? What
24 is this?

25 And he said well, they're working on it. MRI

1 and their air chemists are working on it with the Corps
2 of Engineers center for expertise, the air chemist in
3 Omaha, stationed out of Omaha, which was Jim Cheney and
4 Bill Crawford.

5 And that's where it went. That was the
6 answer. And I had trouble with that. I had trouble
7 knowing that we needed to have this thing operating in
8 light -- even if this thing were operating as clean as
9 it possibly could, wouldn't it be important that that
10 were operating, and they could tell us that we're
11 meeting contract requirements here? And they said
12 they're working on it.

13 Q For what period of time was the air
14 monitoring system on the perimeter not meeting contract
15 requirement?

16 A It's my understanding that it never did with
17 respect to beta-naphthylamine. It's my understanding
18 that if -- and I don't know what's happened since I
19 left; I don't know what's happened.

20 Q When you say it never did, meaning during
21 your tenure --

22 A From September 23 through February.

23 Q To your recollection, and that's based on
24 discussions with site personnel and also --

25 A It's based on MRI's monthly reports. The

1 contractor required to do that, made note of them on the
2 first page of the reports, as I can recall, and referred
3 to the pages that had the data.

4 Q And where would those monthly reports be?

5 A They're on file in the administration trailer
6 and the QA trailer, I would think.

7 MR. HARRISON: Kurt, there's one more aspect
8 to the story. Do you want to say it now?

9 THE WITNESS: Yeah. MRI had an environmental
10 scientist come up to the site intermittently to work on
11 the meteorological station that's -- record the
12 meteorological data on the site and also the off-site
13 operations with the off-site monitors.

14 And in the course of conversation with MRI's
15 -- the people doing the work -- the question was raised,
16 I think this is prior to actually seeing the monthly
17 reports, the question was raised how -- I'm asking him
18 how effective is this, you know --

19 MR. HARRISON: The perimeter monitoring.

20 THE WITNESS: The perimeter monitor, how
21 effective is it at telling me what's in the air? My
22 initial concern was what am I spelling out here? I
23 mean, I can smell this somewhat sweet kind of odor that
24 is prevalent around the site, and I don't feel
25 comfortable standing in it, first of all, but can you

1 tell me what it is?

2 And there was actually no characterization
3 that could say this is what you're smelling at any one
4 particular time, but I was concerned. And I expressed
5 these concerns to MRI's personnel, and I expressed -- I
6 subsequently expressed concerns with MRI's personnel as
7 to what's the matter with the monthly reports, you know,
8 why isn't this system doing it? Why aren't you getting
9 to the limit that you thought you could get to?

10 MR. HARRISON: On detection on the perimeter
11 monitoring?

12 THE WITNESS: On detection of
13 beta-naphthylamine in the perimeter monitors, the
14 perimeter air monitors. And in that conversation, it
15 somehow came out that they pretty much knew, someone --
16 or perhaps it was an assumption or a consideration or a
17 concern that they may not get to the detection limit
18 using the method TO-13 they prescribed -- I'm thinking
19 it's TO-13, the prescribed EPA method for this contract
20 to detect for beta-naphthylamine.

21 MR. HARRISON: Be clear now. What time
22 period were they talking about when they said they had
23 this concern that they wouldn't meet the method -- that
24 it wouldn't work; is that what they were saying?

25 THE WITNESS: I think they knew -- they

1 pretty much knew -- this is what I -- I think they
2 pretty much knew they couldn't get that detection limit
3 using that method.

4 MR. HARRISON: When did they know it?

5 THE WITNESS: Before they bid the contract.

6 MR. HARRISON: Who do you think knew that? I
7 don't mean a name, I mean a category?

8 THE WITNESS: The people required to do the
9 work knew that.

10 MR. HARRISON: MRI's people?

11 THE WITNESS: Right.

12 MR. HARRISON: And did they communicate that
13 to anybody? You may not know the name, but --

14 THE WITNESS: I would think so. I would
15 think that was explained, and it was bid the contract as
16 it is if you want the job.

17 BY MR. MARTIN:

18 Q Do you believe they communicated that to OHM?

19 A I honestly can't say I -- I don't know who
20 that was communicated to, but the response was use this
21 method, bid the contract using this method, period,
22 pretty much period.

23 Q Were there any detections using this method?
24 Were there any levels of detections using this method?

25 A No, not that I know of. I think there were

1 estimates that if it were there, it would be at a number
2 lower than this, but higher than what we set out to get
3 to.

4 MR. HARRISON: There's one detail you might
5 want to say. It's not perimeter monitoring, but there
6 was a detection of BNA on site that you were told about
7 at one point in the steam sampling. Just briefly tell
8 about the details of that.

9 THE WITNESS: I was pressing continuously to
10 have them sample -- adequately sample and analyze the
11 steam, the wet dust. And I think at the very last --
12 one of the last two trials at risk burns, I think it was
13 Focus Environmental, a subcontracting firm, set out a
14 sampling train to run -- I'm not sure if it was an
15 eight-hour, it couldn't have been an eight hour.

16 I believe the trial burns ran for eight
17 hours, but I think that was what they shot for to get --
18 to be able to adequately sample and analyze the steam
19 for beta-naphthylamine. And I think they ran three
20 runs.

21 I'm not sure of the reports. I'm sure
22 they're documented somewhere. But one of them came back
23 with a detection of beta-naphthylamine above a certain
24 number.

25 I don't know the numbers, and I'm not real

1 sure of what was back, but the one that was -- that put
2 in question that there may actually be some
3 beta-naphthylamine coming off this steam was dismissed
4 as having come in contact with the ash, with the ash
5 itself.

6 MR. HARRISON: The sampling probe?

7 THE WITNESS: The sampling tip, the probe,
8 yeah, which is a tube, I'm thinking, drawing the air
9 which had to be -- and I don't know for sure, but if
10 it's in the steam and it's in the wet dust, it had to
11 pretty much be covered with the wet dust and ash anyway.

12 So I raised some concerns. I was just -- I
13 was pressing for them to sample it and analyze it. And
14 when the results finally came back, which was months,
15 possibly two months after the sampling event took place
16 before I heard them give the results, and that was after
17 I left the project. And I don't know if QC was -- or QA
18 was involved with that sampling event.

19 BY MR. MARTIN:

20 Q Did you record any of your observations about
21 the perimeter air monitoring system in your personal
22 logbook about its operation?

23 A I think my only comment on a shift report may
24 have been that it's up and operating.

25 Q Uh-huh.

1 A If it's actually intermittently running
2 sampling, it's up and operating. MRI, for the most part
3 -- they staffed the trailer and OHM's QC compiled their
4 information and put it together in a report, a QC report
5 which in turn, the Corps of Engineers handed to the EPA.

6 Q Uh-huh.

7 THE WITNESS: Let me go off the record a
8 second.

9 MR. MARTIN: Okay.

10 (Discussion held off the record.)

11 MR. HARRISON: By the way, Bob, we have about
12 20 minutes left. There are a few important things I
13 think Kurt would like to share with you when you're done
14 with your list.

15 BY MR. MARTIN:

16 Q MRI did note in their monthly reports the
17 failure of the perimeter air monitoring system?

18 A Yes.

19 Q Did the failure include use of the state
20 limit for detecting BNA? I believe there was a state
21 limit --

22 MR. HARRISON: For occupational exposure?

23 MR. MARTIN: Perhaps. Let's say for
24 occupational exposure.

25 THE WITNESS: Yeah, that was, that's what we

1 -- I think that's ultimately what allowed them, what
2 gave them justification. In my assessment, if they
3 didn't get there -- when I carried this flagged
4 information up to Modricker after I first viewed it and
5 seen it, it was how can we do this?

6 How can we continue to let them operate if
7 they're not meeting the contract requirements for
8 something as perimeter air monitoring? And he said
9 they're working on it.

10 And I think what you just said, as far as
11 less than the state is going to require us to meet our
12 estimates are that we will fall below that number. And
13 that's the rationale. That's where they went.

14 BY MR. MARTIN:

15 Q Below the state occupational limit, however,
16 above the contract limit?

17 A Right. And those are numbers -- I'm thinking
18 those have got to be numbers that are estimated. I
19 don't know. I don't know. But I'm thinking if you
20 can't recover a sample, you're going to have to guess at
21 what's there.

22 I don't know how it's done. I don't know the
23 science involved, but I'm sure someone looked at it real
24 hard and decided we can say this. We can say that we're
25 below a state annual toxicity guideline possibly. I

1 think I may have heard that. I didn't know.

2 Q Given the state limit and the contract limit,
3 which are two different limits, do you believe detection
4 remained problematic with the air monitoring system at
5 the fence line? In other words, you still faced
6 persistent problems in getting detections of BNA, they
7 were using different methods and different limits?

8 A There was some modifications in the -- right,
9 in the recovery aspects. I don't know what the
10 different recovery limits were.

11 Q They were trying different things?

12 A Right.

13 Q You remarked earlier that detections in the
14 air monitoring system at the fence line remained
15 problematic during the operation on the site?

16 A Recovery of samples, I think, remained
17 problematic. Beyond that, I don't know what the
18 detection numbers -- how they assessed or determined
19 that. I don't know. But I think they were -- and it's
20 documented in MRI's reports. I think MRI's reports are
21 accurate with what they were able to and unable to do.

22 Q But you did do not recall recoveries,
23 specific recoveries?

24 A I think there was consistently low
25 percentages of recovery on the surrogate, yes, and I

1 don't know if --

2 Q On the surrogate for BNA?

3 A Right.

4 MR. MARTIN: All right. You wanted to make
5 other observations.

6 MR. HARRISON: Well, he has information, I
7 think, that he's prepared to share with you. Did you
8 want to start with the logs, your personal logs?

9 THE WITNESS: Yeah, I got these notes that
10 were pretty much -- it's kind of a combination of notes
11 from -- to myself for myself. And some of it is
12 relevant to what happened over the course of my work out
13 there.

14 A lot of them need explanation, I'm sure.
15 And a lot of them I may not be able to explain. I may
16 not be able to recall. But I think it's important --
17 it's information that you might -- I know you would have
18 better use of it than I to delve into this if that's
19 what you intend to do.

20 MR. MARTIN: That is what I intend to do.

21 THE WITNESS: And I would like you to have
22 them.

23 MR. MARTIN: I will accept them for the
24 record.

25 MR. HARRISON: Now, do you want to provide a

1 copy or the original or do you want to receive a copy or
2 the original?

3 MR. MARTIN: Do you have at this time just
4 the original?

5 THE WITNESS: I have --

6 MR. HARRISON: Just a copy tonight, but he
7 has the original in another location.

8 MR. MARTIN: I would accept a copy this
9 evening, yeah.

10 MR. HARRISON: All right. Is that
11 acceptable?

12 THE WITNESS: That's fine.

13 MR. HARRISON: Do you wish to turn the
14 original over to him later?

15 THE WITNESS: I feel comfortable giving you
16 this information and not having it vanish, and I feel
17 comfortable doing that.

18 MR. MARTIN: It will not.

19 MR. HARRISON: Do you want to turn the copy
20 over now?

21 THE WITNESS: Yeah.

22 MR. HARRISON: Let's talk about the memos
23 after you hand him the logs.

24 THE WITNESS: Okay.

25 MR. MARTIN: Thank you.

1 MR. HARRISON: Kurt, are there other
2 documents in there?

3 THE WITNESS: There's other documents --

4 MR. HARRISON: You should go ahead and --

5 THE WITNESS: -- that are pertinent to
6 beta-naphthylamine detection method with sulfuric acid.
7 There's kind of a memorandum here from the quality
8 assistance team information that has to do with steam
9 litigation meeting where they're trying assess the best
10 way to deal with the steam recovery, steam --

11 MR. HARRISON: Emissions?

12 THE WITNESS: Emissions, yes. To mitigate
13 this steam problem.

14 MR. HARRISON: To your knowledge, were any
15 solutions that came out of these steam mitigations
16 implemented for solving this steam problem?

17 THE WITNESS: To my -- nothing prior to the
18 trial burn and risk burn. There may be something in
19 place --

20 MR. HARRISON: After your departure?

21 THE WITNESS: Subsequently.

22 MR. HARRISON: I'm not asking you, you
23 know --

24 THE WITNESS: After I left in February, they
25 may have put something in place that would deal with

1 this steam.

2 MR. HARRISON: Or they may not?

3 THE WITNESS: Or they may not.

4 BY MR. MARTIN:

5 Q But to your knowledge, during your tenure,
6 these solutions were not implemented?

7 A These solutions were not implemented. And
8 prior to the trial burn, the solutions that would have
9 required introduction back into the air pollution train
10 were not implemented. So whatever happens now, happens
11 beyond the incineration train, the air pollution train.

12 MR. HARRISON: Let's be clear about that,
13 Kurt, in its implications. If they were to implement a
14 system now, such as the one you described earlier, and
15 perhaps as one of the things described in this memo
16 which would capture the steam and send it back into the
17 combustion process or the air pollution control process
18 at some point, which would mean eventually, it would
19 come out the stack or some residue of it would come out
20 the stack.

21 THE WITNESS: That was a resolution that
22 would have had to have taken place before the trial
23 burn.

24 MR. HARRISON: And why in your opinion should
25 it have been done before the trial burns?

1 THE WITNESS: Well, I think that's stated in
2 these meetings.

3 MR. HARRISON: Give us the obvious answer.

4 THE WITNESS: It would affect -- you would be
5 reintroducing potential contaminants.

6 MR. HARRISON: That would come out the stack.

7 THE WITNESS: That you would have to deal
8 with and measure.

9 MR. HARRISON: In terms of stack emissions,
10 destruction efficiency, and risk assessment, am I saying
11 what you believe to be the case?

12 THE WITNESS: Yes. Yes.

13 MR. HARRISON: So if they do it now, the
14 emissions might be different than were relied upon in
15 the trial burns and risk burns if they put the steam out
16 the stack?

17 THE WITNESS: Yeah, I think they know they
18 can't do it now and go with this trial burn --

19 MR. HARRISON: Still allow this trial burn?

20 THE WITNESS: This permit that's pending or
21 is in place. I guess there's a permit in place.

22 MR. HARRISON: Permit equivalency.

23 MR. MARTIN: That's correct, permit
24 equivalency is in place.

25 MR. MARTIN: If they had -- they meaning site

1 manage, had an opportunity to implement corrective
2 action that you just brought up.

3 MR. HARRISON: For steam mitigation.

4 MR. MARTIN: For steam mitigation before the
5 trial burn and --

6 THE WITNESS: They had an opportunity to do
7 it before they started burning contaminated soil also.

8 BY MR. MARTIN:

9 Q Okay. And to the best of your recollection,
10 during your tenure, they did not?

11 A Right.

12 Q And what is the consequence of not doing that
13 before the trial burn and before burning contaminated
14 soil?

15 A In my assessment, the consequences would be
16 potential hazardous exposures from fugitive emissions
17 and the inability to implement them back into the system
18 because it compromises the integrity of the trial burn,
19 which is really important, isn't it?

20 MR. MARTIN: Yes, it is.

21 MR. HARRISON: Some of us think so.

22 THE WITNESS: This is a steam litigation
23 meeting. These are logs, I think somewhat
24 chronological.

25 MR. HARRISON: They might be a little out of

1 order.

2 THE WITNESS: There's going to be stuff in
3 here that I'm jotting down as a good through and may not
4 be 100 percent, so you may need some interpretation on
5 some of it.

6 MR. HARRISON: Kurt, are you prepared to take
7 questions from Mr. Martin later to clarify what these
8 mean?

9 THE WITNESS: I would be happy to.

10 MR. MARTIN: Thank you.

11 THE WITNESS: This is QC data.

12 MR. HARRISON: Quality control?

13 THE WITNESS: Right. QC data with
14 percentages of BNA in the feed and in the ash and
15 percentages of removal from 9/29 to November 13, which
16 is -- what I was saying, this stuff, it's not doing what
17 it needs to do.

18 Tell me what's in the steam. Tell me what's
19 in the fugitive emissions and assure me that it's okay
20 to be out here and my boys -- it's okay for staff to be
21 out here in this stuff.

22 MR. HARRISON: Kurt, the QC document you're
23 providing to Mr. Martin, is this a copy of an original
24 of yours or --

25 THE WITNESS: This is a copy.

1 MR. HARRISON: You're retaining a copy?

2 THE WITNESS: Right. And it's stuff that's
3 in with my time sheets, which you probably don't need,
4 right? I don't see that you --

5 MR. MARTIN: Oh, no. I will take for the
6 record what you have.

7 THE WITNESS: Okay. You got the whole
8 shebang.

9 BY MR. MARTIN:

10 Q While you're reviewing your documents, a
11 brief question, did you ever have any reason to question
12 the physical integrity of the air monitoring network, in
13 other words, the connections of the air perimeter
14 monitors to the chromatographs in the trailer? Did you
15 ever have any reason to question whether the linkages
16 were operational?

17 A No.

18 Q You did not?

19 A No.

20 MR. HARRISON: Did you inspect them yourself
21 at any time?

22 THE WITNESS: I didn't inspect them
23 regularly, but I think pretty much like -- no, I didn't
24 inspect them regularly.

25 BY MR. MARTIN:

1 Q Was the point ever raised that the problems
2 with recoveries from the air monitors on the perimeter
3 might also be caused due to the tubing?

4 A Yes, and temperatures, and I think they
5 address those sufficiently and with the engineering
6 data. I think they address those issues that they could
7 draw through the heated conduit a sufficient quality of
8 air to do what it needed to do. I don't know what the
9 resolutions were with the failure to recover the
10 surrogate.

11 Q But do you recall the problem being raised or
12 discussion at least?

13 A Somewhere I may have seen it in a document,
14 yes.

15 Q Okay. And you're not particularly aware of
16 the resolution?

17 A Right.

18 Q Okay. Any of the issues which you've raised
19 this evening in this statement, would they cause you to
20 be concerned about the outcome of the trial and risk
21 burns that were performed at the site, the integrity of
22 those tests?

23 A No, nothing that we discussed to this point.

24 MR. HARRISON: How about something that you
25 haven't discussed?

1 THE WITNESS: Well, there is something that
2 we did discuss that it's simply a concern that I have --
3 I don't want to sound like I'm accusing or --

4 MR. MARTIN: I understand.

5 THE WITNESS: But someone -- I asked for help
6 early on to get clarification on -- an introduction and
7 a good handle on the continuous emissions monitoring
8 trailer. This is not MRI's work. This is OHM's QC work
9 with continuous emissions monitoring trailer.

10 Part of our routine was to observe --
11 somebody on QA staff was to observe the OHM's QC,
12 observe OHM's instrument technician calibrate continuous
13 emissions monitors.

14 I asked -- early on, I asked -- and usually I
15 didn't have to do this. It wasn't my requirement. I
16 would work night shift, and the day shift would -- QA
17 and QC in the CEM trailer.

18 I asked for some help, some technical
19 assistance. And when Jim Cheney and Bill Crawford come
20 out, that's where I thought I would get this assistance,
21 understanding the calibration procedures and
22 subsequently what QC's responsibility was to document
23 those calibration procedures.

24 When Jim Cheney and Bill Crawford were out,
25 when they went to the CEM trailer, I asked to get into

1 the trailer with those guys so they could personally
2 show me what's happening and how it's accomplished and
3 where it's done like it is.

4 And it may have been one of their first times
5 into the CEM trailer. And it is a small trailer, but
6 the response was initially yeah, okay, you can come with
7 us, and we'll give you a handle on it.

8 But then there was not enough room in the
9 trailer. They said we'll do it another time, there's
10 not enough room in the trailer. And I didn't get any
11 technical support or instruction when I went at that
12 point.

13 And subsequently, it never happened with our
14 experts from Omaha. The time frame approaching the
15 trial burn or getting close to where the trial burn was
16 coming, it may have been late December, early January, I
17 was there in the morning and did a CEM QA oversight on
18 QC for the daily calibrations.

19 And I understood what the instrument tech was
20 doing as to what he explained to me and what the QC
21 explained to me. And the question that I raised was on
22 the sheet that I was to initial, there's a column for
23 drift, which would be a calculation of the actual
24 reading and how far out the instrument was in, I'm
25 assuming, a 24-hour period and a column for that data to

1 go for the drift, how far it would have been out that
2 day.

3 It may have been a drift -- a weekly drift or
4 a monthly drift, I'm not sure, but the information
5 wasn't filled in in that column on that sheet that I was
6 to initial. And my question is was why isn't it done
7 that way? Why won't you transfer those numbers there
8 and simply put them down in the space you're to do it?

9 And the response was we're working on
10 calibration drift, and we'll compile that information
11 soon, forthcoming. I never saw it. Not that it didn't
12 happen, but I never saw it.

13 MR. HARRISON: Was there a change in
14 equipment at the site?

15 THE WITNESS: Yeah. And I think it was
16 accepted knowledge that the CEM trailer was maybe not --
17 I don't know how to best explain it. It was doing what
18 it needed to do, but it may not have been --

19 MR. HARRISON: State of the art?

20 THE WITNESS: State of the art where they
21 wanted it to be -- where I expected -- where they
22 expected it to be, QC and OHM, et cetera. And after the
23 trial burn, it's my understanding that it was brought up
24 to state of the art.

25 MR. HARRISON: Why?

1 THE WITNESS: OHM pretty much removed and
2 reinstalled to where it did what -- it looked a lot
3 better than it did when it was in operation. And I
4 questioned why, if we got plenty of time up front, and
5 this thing is this important, why don't we do it while
6 the incinerator is sitting cold and there's time to do
7 it?

8 MR. HARRISON: Before the trial risk burn?

9 THE WITNESS: Yeah, before it continued on.
10 And it was something they'd get to. Someone should look
11 at it. I mean, I think it's important that someone ask
12 the question, you know, what did this look like before
13 and how did you have to -- the procedures that you had
14 to go through to get numbers, calibrations, and the
15 drift, a drift check on how far out this stuff operates
16 daily, weekly, and monthly. It would be interesting to
17 see those numbers.

18 BY MR. MARTIN:

19 Q So the practical effect of the CEM unit and
20 trailer not being state of the art might have been that
21 the detection of contaminants of concern was --

22 MR. HARRISON: In this case, we're talking
23 stack emissions?

24 MR. MARTIN: Right. In this case, stack
25 emissions problematic, difficult?

1 MR. HARRISON: Less than accurate?

2 MR. MARTIN: Less than accurate?

3 THE WITNESS: Well, I don't know.

4 MR. HARRISON: That's the point.

5 THE WITNESS: I don't know.

6 MR. HARRISON: And you had the oversight, and
7 you didn't know?

8 THE WITNESS: I don't know. And when I
9 raised these issues, I was tasked to comprehend that it
10 was all okay by Tom Conroy, Corps of Engineers. He was
11 out there early on. And he came over with me.

12 BY MR. MARTIN:

13 Q You say you were tasked to find that it was
14 all okay?

15 A Right.

16 MR. HARRISON: To reach an understanding?

17 THE WITNESS: Right. And the understanding
18 that I reached -- what I came away from there and was
19 willing to agree to Tom Conroy, was I'm observing the QC
20 verify that the instrument tech is calibrating the one
21 of five or six instruments and documenting the numbers
22 that will get him to zero and read zero on the computer
23 monitor in the control room.

24 And that as I observe him with the numbers
25 that he's reading and writing down, I'm observing those

1 numbers, and what I have a question with is we're not
2 filling in this column over here.

3 MR. MARTIN: The drift column?

4 THE WITNESS: The drift column.

5 MR. HARRISON: Both numbers you're comparing
6 the same, the instrument and the computer.

7 THE WITNESS: Via a sheet that gave you
8 calibration instructions with addition and subtraction
9 of certain numbers parts per million, the numbers were
10 coming out to zero or within the drift that would have
11 been documented, how far out the instrument might have
12 been, but the drift column was not filled in.

13 BY MR. MARTIN:

14 Q So the instruments upon calibration showed
15 near zero or at zero, but the drift column was never
16 filled in?

17 A Right.

18 Q On the hard copy, on the hard page?

19 A Right.

20 Q Was dioxin ever monitored for periodically in
21 the stack as part of the CEM during the risk or trial
22 burns?

23 A Dioxin, yeah, dioxin was monitored by MRI.

24 MR. HARRISON: With the CEM special sampling
25 method.

1 THE WITNESS: By MRI.

2 MR. MARTIN: Using a probe?

3 THE WITNESS: Right.

4 MR. HARRISON: And would not be continuous.

5 MR. MARTIN: We're prepared to close, I
6 think. Do you have other documents you want to share?

7 MR. HARRISON: I don't know of any more
8 documents. I think there are three or four more points
9 you should just be aware of real quick.

10 On the automatic waste feed cutoffs, was
11 there a system in place, Kurt, to your knowledge, for
12 example, on the PH from the scrubber that when a
13 condition of operation exceeded your operating
14 perimeters in the permit equivalency, was there a system
15 that allowed a continued period of operation out of
16 compliance before the waste feed was shut off or didn't
17 this shutoff happen automatically immediately?

18 THE WITNESS: The PH could operate within a
19 range. I'm not sure whether it is six to eight,
20 possibly. If it spiked below six -- I'm not sure of the
21 number -- it had 60 minutes to correct itself, the
22 caustic flow and the mix of it in the scrubber and
23 circulation back through past the instrument probe where
24 it was read, where the PH was read in the probe, it had
25 a 60-minute time frame to get it back in line before it

1 shut off waste feed.

2 MR. HARRISON: Were there incidents in which
3 the PH probe was removed around the 59 minute time to
4 essentially avoid a waste feed cutoff to recalibrate
5 back to start recounting from zero?

6 THE WITNESS: Say that again.

7 MR. HARRISON: Were there incidents in which
8 there was a PH problem where you operated out of
9 compliance with this range you mentioned, this operating
10 perimeter range, six to eight or whatever, for 59
11 minutes or so, something close to 60 minutes, and then
12 one of the technicians removed the probe and stuck it in
13 PH, in caustic, or in water or something to give up a
14 reading that did not represent operations which would
15 reset the automatic waste feed cutoff system back to
16 zero minutes and it would start counting again back to
17 60; did that ever happen?

18 THE WITNESS: Yes. Well, it happened that
19 the probe -- if it spiked out of operating parameters,
20 the clock would start. And in order to recalibrate the
21 probe, you would have to pull it from the solution,
22 clean it off, pull it from the circulation of the
23 scrubber water, clean it off, and calibrate it in a
24 neutral solution to an unknown quantity of an accurate
25 number of PH.

1 And it was really fine; it was a really close
2 number. So it was always difficult to get that
3 calibration right on, right in there. I think when
4 you're dealing with five digits, it's a really tough
5 instrument to get down to a thousandth or whatever it
6 might be.

7 It's real tight. It's a real tight number to
8 get to. And there was -- and I guess the complication
9 was the caustic solution -- there was difficulty
10 maintaining and getting a calibration on the probe and
11 getting it back where you're comfortable with it and
12 getting it back into and on line within 60 minutes,
13 within the 60 minutes before you had to shut off waste
14 feed.

15 And this was probably happening at a time
16 when a shut off of the waste feed was important because
17 of the problems that they're having with the kiln, the
18 temperatures were up, they're running hot, they're high
19 and there's a slag -- concern of slag in the kiln if you
20 got to shut off the waste feed, and it kind of -- they
21 didn't want to have to deal with it.

22 MR. HARRISON: They didn't want to have to
23 deal with what?

24 THE WITNESS: They didn't want to have to
25 deal with the shut off. But that's not saying they

1 intentionally kept --

2 MR. HARRISON: I understand.

3 THE WITNESS: -- kept running through,
4 pulling the probe and resetting the clock.

5 MR. HARRISON: Just to avoid the shut off?

6 THE WITNESS: Yeah, I'm not saying that
7 that's what happened.

8 MR. HARRISON: They did remove the probe on
9 occasion?

10 THE WITNESS: They removed the probe pretty
11 much every time they couldn't get it to come back on
12 line. One incident in particular, the caustic solution
13 wasn't there.

14 MR. HARRISON: The tank was empty?

15 THE WITNESS: The caustic wasn't able to be
16 added. And the question was is the probe out or is the
17 caustic solution on line? It's a pretty well-documented
18 episode. But, yes, it happened.

19 And I'm not saying that they intentionally
20 pulled it out and set it in a neutral solution to reset
21 the clock. But inadvertently, if you take the probe out
22 to recalibrate it, and put it back in, the clock starts
23 running again.

24 MR. HARRISON: It has that effect.

25 THE WITNESS: It would take some 30 minutes

1 or 45 minutes to recalibrate to put it back in and it
2 starts the lock again.

3 MR. MARTIN: So removal of the probe did
4 result in avoiding an automatic waste feed cutoff
5 whether --

6 THE WITNESS: Inadvertently or --

7 MR. MARTIN: Inadvertently or --

8 MR. HARRISON: Either way?

9 MR. MARTIN: Yeah, had the same result.

10 THE WITNESS: And then the issue -- the
11 resolution of Bhupi Khona was to put a redundancy in the
12 probe, a second probe in line that they could go -- they
13 could switch from one to another and always have a probe
14 on line.

15 And then the operating parameters were set
16 that if it spiked below the operating parameters, the
17 waste feed would shut off, you would shut it off. It
18 would be up to the operators to say this has to be shut
19 off.

20 MR. HARRISON: It wouldn't be done
21 automatically?

22 THE WITNESS: No, it wouldn't be done
23 automatically.

24 MR. MARTIN: And that was a result of --

25 THE WITNESS: And it wouldn't be done

1 automatically.

2 MR. MARTIN: And that was a result of the
3 system that Bhupi had implemented of putting in a
4 redundant probe?

5 THE WITNESS: No. I don't think the
6 redundant probe ever actually went on line. It was the
7 result of a couple of episodes of running out of
8 compliance with the acid, with the PH being acidic in
9 the scrubber, yes.

10 MR. HARRISON: So is it your understanding,
11 Kurt, that for the shutdown to occur based on a PH
12 parameter exceedance, it would require a decision by a
13 human being to manually shut it down?

14 THE WITNESS: That's how it was.

15 MR. HARRISON: That's how it was run?

16 THE WITNESS: Right.

17 MR. MARTIN: There was no such thing after
18 that point as an automatic waste feed cutoff, you would
19 have to have a manual waste feed cutoff?

20 MR. HARRISON: After what point?

21 THE WITNESS: If you didn't pull the probe,
22 after one hour, it would shut off. It would interlock.
23 It would shut off the waste feed.

24 MR. HARRISON: So it was manual in the first
25 hour, automatic after an hour?

1 THE WITNESS: It was --

2 MR. HARRISON: It wouldn't shut down within
3 the first 59 minutes unless a human being decided to do
4 it?

5 THE WITNESS: Right.

6 MR. HARRISON: But it would shut down in 60
7 minutes unless you pulled the probe?

8 THE WITNESS: Right.

9 MR. HARRISON: Did Mr. Khona, from EPA,
10 recommend any changes in the operational procedure
11 regarding this 60-minute delay to shut off?

12 THE WITNESS: Yeah.

13 MR. HARRISON: What was the change he
14 recommended?

15 THE WITNESS: And I think it was a consensus
16 that after possibly the second episode where this
17 condition occurred where you could calibrate and reset
18 the clock, it was -- we changed policy. And as soon as
19 the PH spiked below the operating parameters, the
20 operator was to shut off waste feed.

21 MR. HARRISON: Manually?

22 THE WITNESS: Manually. They didn't
23 incorporate an interlock where it would shut off
24 automatically, which the capability was there.

25 MR. HARRISON: They chose not to do it?

1 THE WITNESS: It would have required some
2 computer -- yeah, some input.

3 MR. HARRISON: Last point for me. Would you
4 -- well, two points. Did you feel the Army Corps had
5 adequate technical training and experience to provide
6 oversight of OHM on this incinerator so that if OHM made
7 a technical mistake or decided to be technically
8 dishonest, that the Army Corps would catch them, catch
9 the mistake or dishonesty? Just tell it like you know
10 it, whatever the answer is.

11 THE WITNESS: I think the consultants -- I
12 think the construction management staff that was on site
13 throughout the operations had to rely heavily on OHM's
14 QC and operators for technical experience, expertise.

15 And the amount of technical training and
16 expertise that was provided to me personally, I felt was
17 inadequate.

18 MR. HARRISON: All right. Did you ever talk
19 with Gregg Crystall of EPA, the project manager, about
20 your feelings about whether the incinerator would work
21 or not?

22 THE WITNESS: Yeah. Let me explain where I'm
23 coming from. You're running out of time?

24 MR. HARRISON: Yeah.

25 THE WITNESS: I left this project

1 unwillingly. February came around, and we were into a
2 new phase of work, got through the trial burn, and we
3 had -- the staff had some options, you can stay here or
4 you could -- you could put down your preference, stay on
5 the project or other places, options of where you might
6 want to go to work until next September when we should
7 be back on line.

8 I wanted to stay here. My second option was
9 -- they sent me to a fish and wildlife construction site
10 down in West Virginia. I was sent to West Virginia. It
11 wasn't necessary for me to be there.

12 And I had issues that I wanted to follow up
13 on, but it was -- I didn't get the opportunity to deal
14 with it. I left here thinking this thing is going to
15 prove itself without a doubt that it's not going to
16 work.

17 When I came back in September, I was informed
18 that they didn't need me to sign on for another term and
19 there was some complaint by my administrative practices
20 with the car -- with the government car early on when I
21 went down there.

22 Anyway, when I was no longer required to be
23 there, I was still under the assumption that there's
24 enough weight and evidence that this thing has serious
25 problems, it would -- someone would come to their senses

1 and say this is not going to make it. It's not going to
2 do it.

3 That didn't happen. And I wanted to get to
4 the peer review meeting. And I went to the peer review
5 meeting, and I wanted to somehow talk to the experts,
6 both in incineration and industrial hygiene, the health
7 aspects of it, without having to sit in front of Mike
8 Ogden and the people that I worked with that I didn't
9 want to have to deal with.

10 I'm not very confrontational, and I didn't
11 want to have to confront them and say these things.

12 MR. MARTIN: I understand.

13 THE WITNESS: So I didn't really get to sit
14 down and talk with these people. I briefly expressed
15 some things and was kind of dismissed. It wasn't
16 important. Some people took notes and said yes this,
17 this, and this.

18 But on the way out of there, after the peer
19 review, the second day, second session, I'm walking down
20 the hall, and I'm walking past Gregg, and I say Gregg --

21 MR. HARRISON: Gregg Crystall.

22 THE WITNESS: Gregg, this thing is never
23 going to work. It's not going to work. He goes, I
24 know, but now it's up to OHM. We've done our job. And
25 I'll swear to that in front of God and the courts and

1 everything.

2 MR. HARRISON: EPA's project manager.

3 THE WITNESS: Because it may have been
4 off-the-cuff, but I can't imagine him saying that
5 without thinking about what the hell he's saying. And
6 it was, I know, but we've done our job.

7 We got them through the trial burn, gave them
8 the opportunity to show that it can't work. They'll
9 prove to themselves that it won't work.

10 I mean, that was the attitude I left here
11 with last February, that they're going to show that they
12 can't do it. If you just look at the data and the
13 information and the record of what's happened here, it's
14 going to show that this thing is not doing it.

15 And after the peer review, it looked like the
16 peer review is going to say there's not too much --you
17 know, they're doing everything they need to do out here.

18 And actually, I don't know the big picture.
19 I mean, there might be cleanup sites that are much, much
20 worse than this. I'm just thinking there's a contract
21 you got to go by. And if you don't hold to the
22 contract, then you got to justify it somehow, some other
23 way, and that's it.

24 MR. MARTIN: Thank you. This is concluded
25 and you're off the record.

(The statement concluded at 9:20 p.m.)

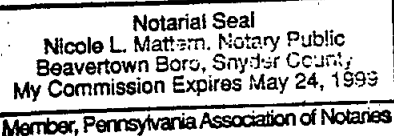
1 COUNTY OF SNYDER :
2 COMMONWEALTH OF PENNSYLVANIA : SS


3 I, NICOLE L. MATTERN, Reporter-Notary Public,
4 authorized to administer oaths within and for the
5 Commonwealth of Pennsylvania and take depositions in the
6 trial of causes, do hereby certify that the foregoing is
7 the testimony of KURT DAVIS.

8 I further certify that before the taking of
9 said deposition, the witness was duly sworn; that the
10 questions and answers were taken down stenographically
11 by the said NICOLE L. MATTERN a Reporter-Notary Public,
12 approved and agreed to, and afterwards reduced to
13 typewriting under the direction of the said Reporter.

14 I further certify that the proceedings and
15 evidence are contained fully and accurately in the notes
16 taken by me on the within deposition, and that this copy
17 is a correct transcript of the same.

18 In testimony whereof, I have hereunto
19 subscribed my hand this 11th day of March, 1998.

20
21 
22


23 NICOLE L. MATTERN
24 Notary Public
25

23 My commission expires
24 on May 24, 1999
25

LAWYER'S NOTES

[illegible]

AR319823

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8; 17; 14; 73:9; 74:7; 75:7; 25; 78:9; 21; 79:5; 12; 15; 21; 24; 80:3; 5; 12; 17; 21; 24; 81:3; 21;</p>	<p>82:1; 4; 7; 12; 17; 20; 83:6; 22; 84:2; 9; 11; 13; 25; 85:2; 7; 22; 87:1; 5; 89:15; 20; 90:1; 9; 91:3; 5; 8; 17; 92:4; 7; 93:1; 3; 18; 94:8; 18; 95:24; 96:3; 6; 10; 15; 25; 97:8; 10; 22; 25; 98:5; 14; 16; 21; 99:1; 5; 8; 12; 15; 22; 100:1; 11; 22; 25; 102:13; 22; 103:3; 104:9</p> <p>witnessed [1] 29:19</p> <p>won't [4] 58:11; 60:18; 89:7; 103:9</p> <p>word [1] 40:18</p> <p>words [4] 31:13; 55:1; 77:5; 85:13</p> <p>wore [2] 50:7</p> <p>work [22] 5:2; 11:11; 13:5; 26:17; 19; 20; 70:10; 15; 71:24; 72:9; 78:12; 87:8; 18; 100:20; 101:2; 8; 16; 102:23; 103:8; 9</p> <p>worked [8] 5:11; 17; 11:10; 17:3; 39:6; 48:18; 49:18; 102:8</p> <p>worker [1] 38:4</p> <p>workers [8] 40:14; 18; 19; 44:22; 46:10; 47:1</p> <p>working [10] 28:9; 38:25; 45:14; 47:8; 48:15; 68:25; 69:1; 12; 78:9; 89:9</p> <p>works [3] 28:15; 18; 37:21</p> <p>worse [1] 103:20</p> <p>worth [1] 57:22</p> <p>would [145] 3:18; 5:2; 6; 6:4; 7; 20; 8:5; 9:18; 10:3; 11:4; 5; 13:5; 15:16; 16:11; 15; 20; 23; 17:5; 8; 20; 21; 20:8; 9; 19; 21:7; 21; 23; 22:14; 18; 22; 23; 23:16; 18; 24:2; 3; 21; 25:25; 29:5; 30:1; 5; 33:6; 36:9; 38:4; 5; 8; 18; 19; 21; 22; 24; 38:19; 40:25; 41:13; 16; 43:8; 24; 48:1; 3; 50:3; 5; 9; 14; 51:2; 10; 11; 56:10; 17; 18; 19; 57:24; 59:20; 60:2; 61:3; 62:4; 5; 7; 9; 10; 15; 64:12; 65:15; 66:8; 17; 23; 67:1; 68:4; 8; 18; 70:4; 8; 72:14; 73:1; 75:13; 78:17; 21; 79:8; 80:25; 81:8; 16; 18; 19; 22; 82:4; 6; 7; 83:15; 84:9; 86:19; 87:18; 20; 88:23; 89:1; 90:18; 92:10; 93:4; 94:14; 16; 20; 21; 96:25; 97:17; 18; 98:12; 18; 22; 23; 99:8; 23; 100:1; 3; 8; 20; 101:25</p> <p>wouldn't [11] 8:9; 9:19; 38:5; 39:22; 69:9; 71:23; 24; 97:20; 22; 25; 99:2</p> <p>writing [2] 43:22; 91:25</p> <p>written [3] 14:18; 19; 30:23</p> <p>wrong [2] 52:17; 65:22</p>	<p>yet [1] 55:23</p> <p>you'll [3] 35:1; 43:8; 9</p> <p>you're [24] 33:20; 34:7; 37:17; 38:3; 40:19; 20; 42:2; 48:5; 8; 49:11; 54:22; 71:3; 75:13; 76:20; 84:22; 85:1; 10; 86:15; 89:8; 92:5; 95:4; 11; 100:23; 103:25</p> <p>you've [5] 5:8; 49:13; 53:19; 58:24; 86:18</p> <p>your [85] 3:19; 25; 4:16; 17; 6:24; 9:7; 12:25; 13:9; 11; 21; 24; 15:5; 16:14; 15; 17:23; 24:11; 25:14; 27:24; 28:7; 29:24; 30:12; 17; 31:4; 34:1; 6; 8; 35:13; 18; 36:13; 38:15; 40:8; 41:21; 42:19; 43:10; 19; 23; 44:3; 46:14; 18; 47:4; 48:6; 9; 49:7; 8; 9; 52:15; 53:22; 54:1; 4; 7; 8; 55:5; 13; 56:1; 2; 3; 20; 57:2; 5; 16; 67:12; 69:21; 23; 74:20; 21; 75:14; 78:8; 80:14; 20; 81:5; 24; 83:9; 10; 85:10; 93:11; 13; 99:10; 100:20; 101:4</p> <p>yours [2] 43:13; 84:24</p> <p>yourself [1] 85:20</p>
- Z -			
<p>zero [7] 91:22; 92:10; 15; 94:5; 16</p> <p>zone [18] 5:24; 7:19; 22; 23; 15:1; 18:21; 19:22; 20:25; 25:21; 22; 29:8; 39:20; 48:18; 22; 49:1; 60:8</p> <p>zones [1] 49:1</p>			
- X -			
<p>x [1] 2:1</p>			
- Y -			
<p>year [1] 8:5</p>			

APPENDIX F

AR319838

1 DRAKE CHEMICAL SUPERFUND SITE
2 ENVIRONMENTAL ADVISORY COMMITTEE
3
4

5 TRANSCRIPT OF PROCEEDINGS
6
7

8 MEMBERS: DR. ROBERT CARNEIN, CHAIRMAN
9 DAVE HAULMAN
10 LAURA LEE
11 MARY ANN BOWER
12 RALPH HARNISHFEGER

13 DATE: MARCH 3, 1998, 12:05 P.M.

14 PLACE: CITY HALL
15 20 EAST CHURCH STREET
16 LOCK HAVEN, PA 17745
17
18

19 ORIGINAL
20
21

22 NICOLE L. MATTERN
23 NOTARY PUBLIC
24
25

1 DR. CARNEIN: I would like to call this
2 meeting of the Lock Haven Environmental Advisory
3 Committee to order. We have minutes for the last
4 meeting, the meeting of February -- let's see, we have a
5 couple minutes, don't we?

6 MR. HARNISHFEGER: 3rd, 10th, and 17th.

7 MS. LEE: Could we do them separately,
8 please?

9 DR. CARNEIN: Yes. Let's look at the
10 February 3 minutes first. Are there any comments or
11 corrections to the February 3 meeting minutes?

12 MR. HARNISHFEGER: I have quite a few
13 actually, Bob. I think that I can work with Pearl to
14 clarify. It's under 2-C, she mentions Dr. Hoberman; it
15 should be Professor Hoberman. And he was city counsel
16 liaison, I think, that liaison should be described to
17 city counsel.

18 Under Item 6 on the second page, I think
19 where it says M. Harrison told us that A.I.R.'s
20 reviewers did not agree, it was misspelled. The peer
21 reviewers in Williamsport under the next paragraph, I
22 basically have got a lot of changes to that paragraph
23 that I don't think it's time well spent to go over here.

24 I would essentially add some terms to try to
25 get some clarity that I don't think is there. And I'll

1 be happy to go over that with Pearl, if you would like.

2 MS. LEE: Then let's not vote today on it if
3 we're going to go over it with Pearl.

4 DR. CARNEIN: I agree. If you have a lot of
5 concerns and a lot of revisions --

6 MR. HARNISHFEGGER: I think it would be best
7 if she were here to hear them, you know.

8 DR. CARNEIN: Then maybe the best thing to do
9 would be to table those minutes for now, and we'll come
10 back to them at our next meeting.

11 MR. HARNISHFEGGER: Great.

12 DR. CARNEIN: Okay. How about the minutes of
13 the -- what was the next one, February 10?

14 MR. HARNISHFEGGER: Right.

15 DR. CARNEIN: The February 10 meeting. Were
16 there any comments or corrections on these?

17 MR. HARNISHFEGGER: No.

18 DR. CARNEIN: That was the meeting at which
19 we did not have a quorum, so it was an informal
20 discussion, really. Is there a motion to approve the
21 February 10 minutes?

22 MS. LEE: I don't believe we have to approve
23 them if there was no quorum. It was not really a
24 meeting.

25 DR. CARNEIN: Well, I wasn't real clear on

1 whether there really would be minutes if there was no
2 quorum. But we have minutes here for that meeting, and
3 it says basically we had a discussion on the Martin
4 report and the peer review workshop, which certainly is
5 what we did.

6 MR. HARNISHFEGER: I move they be approved as
7 we have them here before us.

8 DR. CARNEIN: Is there a second?

9 MS. LEE: I second that.

10 DR. CARNEIN: It's been moved and seconded.
11 All those in favor, please signify by saying aye.

12 (Everyone is in favor.)

13 DR. CARNEIN: Anyone opposed?

14 (No audible response.)

15 DR. CARNEIN: So we move on to the February
16 17 minutes.

17 MR. HARNISHFEGER: I just have one item under
18 1-C, the fourth line from the bottom, the word responded
19 is misspelled. It should just be responded instead of
20 responded.

21 DR. CARNEIN: Okay.

22 MS. LEE: I also thought at the last meeting,
23 there was a motion that was passed about cutting off
24 comments about the peer review process. I do not see
25 that.

1 DR. CARNEIN: Yes, that's correct. Well,
2 let's see. Where would that go?

3 MS. LEE: Somewhere under 1-C, but it's not
4 present in the minutes. There was motion, though, that
5 they passed.

6 DR. CARNEIN: I don't remember who made the
7 motion or --.

8 MS. LEE: Pearl should have it written down.

9 DR. CARNEIN: Yeah, that's correct, she
10 should have it. Well, again, maybe the best thing to do
11 would be to table these minutes until we can make a
12 correction.

13 MR. HARNISHFEGER: Right.

14 DR. CARNEIN: So do we need a motion to
15 table?

16 MS. LEE: Yes.

17 DR. CARNEIN: Do you move to table?

18 MS. LEE: Sure.

19 MR. HARNISHFEGER: Second it.

20 DR. CARNEIN: All in favor say aye.

21 (Everyone is in favor.)

22 DR. CARNEIN: So we'll table the February 3
23 and February 17 minutes. All right. I think we can
24 probably go on and ask Mr. Martin to give his
25 presentation or what he's going to do, which I'm not.

1. really sure what it is. I guess we're about to find
2. out.

3. MR. CRYSTALL: I'm Gregg Crystall from the
4. Environmental Protection Agency. Do you mind, Bob, if I
5. just go over a couple things?

6. MR. MARTIN: Please, Gregg, go ahead.

7. MR. CRYSTALL: Dave Modricker is making a
8. couple of copies of things that are going to include
9. repository -- already this morning, the decision
10. document from our regional administrator to proceed with
11. the production burn, the letter -- a copy of the letter
12. Senator Specter, which also went to Senator Santorum and
13. Congressman Peterson, which responds to an affidavit
14. from a former Corps employee about things that happened
15. on the site.

16. And then there's an Army Corps of Engineers
17. letter to me, which goes into more detail about those
18. things. Rusty, those are being copied for you as well.
19. I don't know if you got them yet.

20. MR. BOTTORF: No.

21. MR. CRYSTALL: Our plans right now are to
22. start feeding the site soil into the incinerator
23. tomorrow about noon.

24. MR. HARNISHFEGER: About noon?

25. MR. CRYSTALL: Yes, give or take a few

1 minutes either way. And that's pretty much all I wanted
2 to say today. Bob is here. I don't know if he wants to
3 make a presentation rather than --- I think what he
4 really wanted to do is hear issues or concerns that the
5 Environmental Advisory Committee or council may have.

6 MR. MARTIN: Thank you, Gregg. And, Dr.
7 Carnein, thank you for having me here.

8 DR. CARNEIN: It's good to have you.

9 MR. MARTIN: I apologize for not being able
10 to be here earlier last year because of my schedule.
11 And I also apologize for any misunderstandings that may
12 have arisen in connection with the comments of the
13 committee being part of the record for the ombudsman
14 report. They are part of the record. I just wanted to
15 confirm that.

16 Again, thank you for being with me here
17 today. This meeting is on the record as a meeting with
18 the national ombudsman. I have a very tight schedule
19 today and need to get back over to the site for meetings
20 this afternoon with the Corps of Engineers and the State
21 of Pennsylvania; therefore, I would like to go until
22 about 1:05 or so here.

23 And how I would like to proceed is to listen
24 to any concerns that the committee has, either about the
25 ombudsman process itself or the site operations. As

1 Gregg noted, we, meaning EPA, intend to move forward
2 tomorrow with the production of burn. So, Mr. Carnein,
3 the floor is yours or your committee.

4 DR. CARNEIN: Okay. Are there any questions,
5 comments from members of the committee?

6 MR. HARNISHFEGER: I have a question with
7 regards to the draft -- your draft report. The draft
8 report seemed to imply that there were going to be
9 significant issues that weren't covered in the draft
10 covered in the final report.

11 And I guess my question would be, have you
12 rethought that, and are you planning to issue a revised
13 draft to give people comment time to look at what your
14 revised draft said before you make a final report?

15 MR. MARTIN: I seem to recall that there were
16 several issues noted in the draft final report that the
17 committee observed that were not dealt with in the
18 interim report; in other words, there wasn't a comment
19 on several issues.

20 For those issues, which I believe go to
21 alternative technologies, evacuation plan, I believe
22 there was one other, but I can't seem to recall
23 specifically what it was, I understand, Dr. Carnein,
24 that you would ask for additional comment period since
25 the public had not had an opportunity --

1 DR. CARNEIN: That's correct.

2 MR. MARTIN: ---to deal with this. That's
3 granted. There would be a comment period of at least 30
4 days.

5 DR. CARNEIN: So there will be essentially a
6 second draft report?

7 MR. MARTIN: On those issues. In other
8 words, if those issues are treated in this next version
9 of the ombudsman report, there will be an additional
10 comment period of at least 30 days. Thank you for
11 bringing that to my attention.

12 DR. CARNEIN: Do you have any kind of a time
13 frame right now that you are aiming for in terms of
14 producing a final report?

15 MR. MARTIN: Yes, sir. The final report will
16 be finished by March 31, this month. In addition, I am
17 planning, along with the region -- our regional
18 ombudsman, Ken Kryszcum, and I have been working
19 together to convene one more public hearing to collect
20 any other public comments before completion of the final
21 report.

22 And at this juncture, we are looking at, I
23 believe, March 16, if that's a Monday, I'm not certain,
24 here in Lock Haven.

25 DR. CARNEIN: And the purpose of that meeting

1 will be to give others who are not necessarily
2 stakeholders or the public in general as a
3 stakeholder --

4 MR. MARTIN: To provide the public in general
5 one more opportunity to make comment publicly and on the
6 record in connection with the Drake project.

7 MR. MARTIN: The location has not been
8 precisely determined yet, but it will be Lock Haven.

9 MR. HARNISHFEGGER: What groups would you say
10 that you've heard from -- you obviously formulated your
11 first draft based on comments from someone, it certainly
12 wasn't our group, who did you seek information from
13 initially for your initial formulation of your draft?
14 Who provided input to you?

15 MR. MARTIN: So the question is, who provided
16 information and/or comments for preparation -- let's be
17 particular, the interim report, the first report that
18 came out?

19 MR. HARNISHFEGGER: Right.

20 MR. MARTIN: On the Drake site.

21 MR. HARNISHFEGGER: It was labeled draft, I
22 believe was the title if I'm not mistaken. Wasn't it
23 called draft on the title of the document?

24 DR. CARNEIN: It was the August 8, I think,
25 draft final report.

1 MR. MARTIN: Well, there were two reports
2 that have been prepared and distributed. There was a
3 May 8 interim report that was distributed by the Agency,
4 I believe, late in the summer of 1997. And there was
5 also an August 8 draft final report that was distributed
6 by the Agency.

7 MR. HARNISHFEGER: Right.

8 MR. MARTIN: Your question goes to the first
9 report or both of them?

10 MR. HARNISHFEGER: Yes, both reports; who
11 provided input just in a general sense?

12 MR. MARTIN: I think if you examine the draft
13 final report, which was distributed on, I believe,
14 August 8 by the Agency, there is a compilation, and the
15 appendix or one of the appendices to the report that
16 shows which entities submitted written comments, you
17 know, for the report.

18 The interim report, which was prepared in May
19 of last year, shows comments received by the A.I.R.
20 group. And typically, in the ombudsman process, and
21 maybe I can elaborate on this a little more, what
22 typically initiates an ombudsman process is a complaint
23 from a citizen or a group of citizens.

24 If I go so far as to prepare a formal report
25 or a series of formal reports, that generally begins

1 with an interim report. My experience has been that
2 most of the comments received at the stage of the
3 interim report come from the complainants or the
4 petitioners, in other words, the people who originally
5 had a problem that they wanted to see addressed or dealt
6 with.

7 That is then released for more widespread
8 comment, okay, from various governmental entities,
9 federal, state, local, other citizens' groups, and that
10 is the purpose of preparing an interim report, to take a
11 complaint that was presented by, you know, let's just
12 say the aggrieved parties, in this case, that was the
13 A.I.R., the incinerator remediation group to try to deal
14 with some of those issues in the context of the interim.

15 And as they're being dealt with, release that
16 and seek more widespread public comment so that I'm not
17 only hearing from the complainants, all right, but from
18 anyone else who has a view or position they want to make
19 known as I move to a final report.

20 So typically, what you have is when you start
21 with an interim report, that reflects more of the
22 comments and/or concerns of the complaining parties.
23 And you move to hear gradually from more and more people
24 as you go into a draft final, and then ultimately
25 preparation of the final report.

1 MR. HARNISHFEGER: Okay.

2 DR. CARNEIN: I don't know whether you can
3 answer this, but do you feel that your final report will
4 adequately deal with the questions that were raised by
5 A.I.R. and by the other groups who were concerned about
6 this project to begin with?

7 MR. MARTIN: Well, initially I think that
8 would be premature to say. Secondly, of course, I have
9 made, and will continue to make, a good faith effort to
10 deal with every issue that has been propounded by the
11 A.I.R. group.

12 But I do want to say in the end, the
13 complainant determines whether their issues have been
14 sufficiently dealt with. I am not the final arbiter in
15 that decision.

16 DR. CARNEIN: Right. Okay. I guess I'm not
17 sure what I'm trying to get at here, but I guess the
18 problem that all this seems to boil down to for many
19 people is that your final report is going to come out
20 after the incinerator is already in operation.

21 And I'm sure that some people in the
22 community are going to see that as unacceptable,
23 although I don't know that they can do anything about
24 it. I wonder why there has been such delay in terms of
25 issuing your final report? Why has it taken so long?

1 MR. MARTIN: So the question is, why has
2 issuance of the final report been extended to the end of
3 March 1998?

4 DR. CARNEIN: Right.

5 MR. MARTIN: I wanted, in preparation of the
6 final report, to have the benefit of reviewing the peer
7 reviewer's comments to the risk assessment. And also,
8 if possible, to discuss with some of the peer reviewers
9 their comments.

10 I understand from our regional office that
11 the final version of the peer review has not yet been
12 completed. We're not quite certain when it will be.
13 Hopefully, it will be soon. But I intend to do that
14 with peer reviewers. I think that's important to do
15 before completing the final report.

16 Secondly, I also did want the opportunity to
17 come back to Lock Haven again and meet with the advisory
18 committee to also have another look at site operations,
19 which the Corps of Engineers did very well this morning,
20 and to have the opportunity to meet with our regional
21 folks in the State of Pennsylvania and Corps of
22 Engineers staff this afternoon to discuss some
23 operational concerns at the site which have arisen.

24 Third, I had not had an opportunity after the
25 draft final report was issued in August to completely

1 review the trial and risk burn data. I felt that was
2 important as well.

3 And as to the procedures, if I may comment, I
4 think the agency has made it clear, at least in
5 correspondence to the congressional delegation from
6 Pennsylvania, that the -- there are at least two
7 processes in motion here.

8 One, the Agency has made clear is the
9 critical decision making path for whether to proceed
10 with operations at the Drake site itself, that's one
11 process. The other process is what's been deemed the
12 ombudsman process.

13 And I think the Agency has made clear, at
14 least in correspondence, to the congressional delegation
15 that the two are not linked. The ombudsman process does
16 not drive the critical decision-making process for the
17 Drake site.

18 DR. CARNEIN: I think we've also been -- it's
19 been made clear to us also that that's the case. And
20 that the peer review, for example, was also sort of
21 detached from the decision-making process.

22 MR. MARTIN: I hope that responds to your
23 question.

24 DR. CARNEIN: Are there other questions,
25 comments, concerns?

1 MR. HAULMAN: I'm not sure that I completely
2 understand why they're separated, why those two
3 situations are separated. If the peer review process
4 was a necessary thing to do in the first place, why
5 would the burn begin before final results and final
6 reports from the peer review are reviewed by those
7 making the decision to continue? I don't understand
8 that.

9 MR. MARTIN: Gregg, do you want to address
10 that?

11 MR. CRYSTALL: I can answer that, sir. I've
12 mentioned it before in the Environmental Advisory
13 Committee meetings and also in a number of other
14 meetings, we had our risk assessment contractors out at
15 the peer review in Williamsport, and they took more
16 notes than the actual peer reviewers have in their draft
17 report that we've seen.

18 And we went through the draft report that
19 they submitted. And we feel that we have addressed the
20 significant issues that were raised in the Williamsport
21 peer review and response in the summary.

22 And my understanding of how that report gets
23 finalized is it goes to the different peer reviewers to
24 check to make sure what they said was what was in the
25 paper.

1 And we do not expect any changes at all that
2 would alter what the meaning of the comments were. And
3 we feel very confident that we've addressed all the
4 issues that will be in the final report.

5 So in a sense, the issuance of the final
6 report is not a critical item to start up the project.
7 But we felt addressing the comments that we actually
8 heard in Williamsport and that we've seen in the draft
9 report was part of the critical path, and that's in
10 repositories.

11 DR. CARNEIN: And again, on a number of
12 occasions, Gregg has told us that the peer review
13 process would in no way impact the starting date of the
14 incinerator, that the processes are sort of decoupled,
15 almost like the ombudsman process is separate from the
16 -- at least that's how I understood it.

17 MR. CRYSTALL: And we still stand by the
18 statements that if Mr. Martin's final report brings to
19 our attention something that we have not looked at that
20 we feel is a problem, we will stop the project and
21 consider it.

22 We will also say that if the final peer
23 review report from the Williamsport peer review shows us
24 something that's not in the draft that we need to
25 address, we'll stop until we address that as well.

1 So that's still -- the letter to Senator
2 Specter specifically said we will do that in Mr.
3 Martin's report.

4 DR. CARNEIN: Was there a deadline for the
5 peer reviewers to submit their final report?

6 MR. CRYSTALL: I would -- my guess is it's
7 going to be out within two weeks. I saw the draft about
8 a week ago.

9 DR. CARNEIN: That soon?

10 MR. CRYSTALL: Yeah. And I think it's really
11 not much to finalize it.

12 DR. CARNEIN: I just wondered if EPA had said
13 to the peer reviewers, look, we have to have a final
14 report by this date?

15 MR. CRYSTALL: No. We told them we need
16 whatever information they can give us as early as they
17 can give us so we -- until we felt confident we
18 addressed all the issues that were going to be raised,
19 but the final report is up to them.

20 DR. CARNEIN: Are they putting that final
21 report together themselves, or do they submit the
22 material, and then EPA puts it together?

23 MR. CRYSTALL: Dr. Wood, Bill Wood, who is
24 the chair of the risk assessment for -- and the peer
25 review will put the report together from the comments

1 from the peer reviewers.

2 And actually, he asked our region to comment
3 on the draft report as well as folks in headquarters,
4 Dr. Grevatte, the agency science advisor.

5 MR. MARTIN: Just to be clear, Dr. Wood is
6 with the Office of Research and Development.

7 MR. CRYSTALL: That's correct.

8 MR. MARTIN: Gregg, does the committee have
9 the final response of this summary yet?

10 MR. CRYSTALL: I'm not sure specifically if
11 they have it -- the City has it. We will get copies to
12 you, Bob, before the day's out for everything that's
13 going into the repository or has gone in within the last
14 few days.

15 MR. VILELLO: Rick Vilello, Lock Haven City
16 Council. And I tend to agree, I don't understand why
17 the processes are separated. I mean, to do the peer
18 review, to do the ombudsman report, and then to start up
19 the project a month before these final reports are in
20 appears to be irresponsible.

21 And yeah, it's great that the people took
22 notes during the peer review, but the peer review was in
23 Williamsport. A lot of people of Lock Haven couldn't
24 attend, and those notes were never made public.

25 And I'm glad that the people that work there

1 feel comfortable that it's safe, but the people in the
2 community don't get that same feeling. And when there's
3 a Senator and everybody else questioning the process and
4 there's an article in the paper that well, we will start
5 now because we're spending \$80,000 a day and it's just
6 wasting time.

7 Well, nobody in the community caused the
8 chain of events that have taken place there to take
9 place. It's not our fault that \$80,000 a day is being
10 spent at the site.

11 And if the whole process is going to take
12 place, and there's going to be a response from the
13 community, it seems to me that the community should have
14 a chance to review the final reports because there's
15 such a long time between and the reports are so large.

16 I mean, nobody is going to review a
17 thousand-page volume that has numbers that only
18 scientists agree. People want to know, is it safe? And
19 I think the ombudsman was supposed to do some of that
20 translation. I mean, that's the whole purpose of it.

21 And now your final report is going to be a
22 month -- well, you said there's going to be another
23 interim report that we'll have a 30-day comment on, and
24 then your final report is March 31, so how does that
25 time frame fit in when it's already --

1 MR. MARTIN: If I could address that
2 specifically. There will be a final report issued by
3 March 31. Should that final report deal at all with two
4 or three of the issues that advisory council commented
5 on last fall, two of which I believe are the evacuation
6 plan and alternative technologies.

7 The advisory council had asked for additional
8 time to comment on those two issues if they were dealt
9 with again.

10 DR. CARNEIN: Well, to clarify that, I think
11 our concern was that there would not be time -- if you
12 submitted a final report that included those issues,
13 there would not be time for members of city council or
14 the community to comment because it would be a final
15 report and that would be the end of it.

16 And it wasn't so much that we wanted to
17 comment on it as we felt that the community should have
18 an opportunity to comment on it if there were people who
19 were concerned about some of these issues.

20 MR. HARNISHFEGGER: That was also -- before
21 the forum. The whole thing with the forum came up, and
22 people had an opportunity to comment in that avenue as
23 well.

24 DR. CARNEIN: Right.

25 MR. MARTIN: But for those two to three

1 discrete issues, there will be an additional comment
2 period beyond the final report. Now, there were issues
3 that were addressed in the interim and draft final
4 reports that will be dealt with in the final report to
5 distributed on March 31.

6 And that will be -- I'm not anticipating an
7 additional comment period on those. Does that answer
8 your question?

9 MR. VILELLO: Well, I mean, then the
10 ombudsman process didn't really benefit Lock Haven at
11 all, because the benefits obtained will help the next
12 community when the whole process starts over again,
13 because the incinerator is starting tomorrow at noon and
14 the community still has not had -- I mean, the question
15 is still out there, is it safe?

16 I mean, one side says it's completely safe,
17 and the other side says no, it's not safe. And the
18 ombudsman was supposed to weigh and, I mean, produce a
19 document that said yes, it is.

20 Well, with 30 days of burning prior to your
21 final report, you might as well throw the final report
22 in the incinerator.

23 MR. MARTIN: So if I can recapitulate your
24 feeling on that, the ombudsman process did not benefit
25 the Lock Haven community because the final report will

1 be issued after the incineration unit starts operation?

2 MR. VILELLO: Basically. I mean, I don't
3 know what concerns you're going to address in the final
4 report. But the community should have a period of
5 comment on that final report. Even if it's -- I mean,
6 even if it's glowingly positive.

7 I mean, the community should say okay, that's
8 great, we're behind you 100 percent, which will never
9 happen, but we are behind you 100 percent, now let's
10 start. But just the fact, the time frame that things
11 happened, there's no way that will ever happen now.

12 MR. MARTIN: Let me make clear from my
13 perspective as national ombudsman, I am not a
14 decision-making official in the Environmental Protection
15 Agency. I find facts; I make recommendations to
16 decision-making officials within EPA.

17 EPA decided to not link the two processes,
18 okay? If you recall, the interim report, which was
19 issued in May of last year, spoke to at least my desire
20 to have the unit not begin operation until I was done
21 with my process.

22 MR. VILELLO: Absolutely.

23 MR. MARTIN: What I'm telling you is that EPA
24 decided to keep the two processes distinct, much like
25 the peer review process and the operation process are

1 distinct, and begin operations tomorrow. That was an
2 Agency decision, you know.

3 MR. VILELLO: And that's not your fault. I
4 mean, that's an Agency decision. But there's the
5 Agency, and then the paper runs an article saying well,
6 it's a critical point we're spending \$80,000 a day; we
7 got to start it now.

8 MR. CRYSTALL: Well, that wasn't the only
9 thing it said, by the way. That was a reason. It is
10 definitely a significant reason. \$80,000 a day is a
11 lot.

12 MR. VILELLO: It's 30 million dollars a year.

13 MR. CRYSTALL: It's an awful lot of money;
14 that is one of the reasons. The other reason is --

15 MR. VILELLO: But why did we get to this
16 point?

17 MR. CRYSTALL: First of all, it's been an
18 awful long process. We've taken a long time getting our
19 data from the trial burn out. And it's been an awful
20 long time between all the --

21 MR. VILELLO: All the data, and all the
22 reports have taken --

23 MR. CRYSTALL: And we --

24 MR. VILELLO: I mean, before all the hiring
25 and all the startup, that place could have sat idle for

1 another six months in this whole 14-year process, and we
2 wouldn't be spending \$80,000 a day.

3 MR. CRYSTALL: I'll say it again; we haven't
4 seen anything to come out of any of the drafts of the
5 ombudsman report, any of the public comments, any of the
6 peer review comments, any municipal comments that's new.

7 MR. VILELLO: I might agree with you, but the
8 community doesn't.

9 MR. CRYSTALL: I understand that.

10 MR. VILELLO: And it's not your fault either.

11 MR. CRYSTALL: I'm not a decision maker in
12 EPA either. I understand the concern there.

13 MR. VILELLO: That's the frustration we face.

14 MR. BOTTORF: Rusty Bottorf, Clinton County
15 Commissioner, B-O-T-T-O-R-F, by the way. I've heard
16 nothing surprising, but I just wanted to make a
17 statement, then ask you a direct question, if possible.

18 We have heard EPA today, Gregg Crystall, say
19 that the ombudsman's recommendations -- and also Bob
20 said -- the ombudsman's recommendations are not coupled
21 to decisions -- to EPA decisions to burn or not to burn.

22 However, United States Senator Arlen Specter
23 and Congressman Peterson had coupled those two. And I
24 think it's -- you should be aware of that. If you don't
25 have copies of the letters asking for those two things

1. to be coupled, they are available, and I can make them
2. available to you.

3. So there are elected representatives who
4. would like to see those two things coupled. Also, to
5. mention for some of the people that weren't here last
6. time in the peer review on the Environmental Advisory
7. report, also we're waiting for a final recommendation
8. from ATSDR, which we have not seen.

9. Their people have actually, I believe,
10. written a letter to Senator Specter asking for
11. additional time for their final report. So that's
12. obviously not coupled to EPA --

13. MR. CRYSTALL: That letter was never gotten
14. by Senator Specter.

15. MR. BOTTORF: How do you know?

16. MR. CRYSTALL: My understanding is that ATSDR
17. has not written that letter that the commissioner just
18. mentioned they may have.

19. MR. BOTTORF: My understanding is if it isn't
20. there now, it's on its way. I can check that later
21. today. Also, the peer reviewer's final comments are not
22. coupled to EPA decision making. Clinton County
23. Commissioners' requests and recommendations have not
24. been coupled to EPA decision making.

25. The Lock Haven Environmental Advisory report

1 obviously then also, I would assume, any recommendations
2 you may make, are not coupled to EPA decision making.
3 Lock Haven City Council, any decisions they make, are
4 not coupled to EPA decision making.

5 And my statement on that is that it's not
6 only irresponsible, I agree with the city councilman,
7 Mr. Vilello, but it's also dangerous because we have an
8 agency with no oversight, and that's something we can
9 all think about a little more as we go to bed tonight.

10 The question I wanted to ask you directly,
11 Bob --

12 DR. CARNEIN: I don't know who's in charge of
13 this meeting at this point. Are you in charge of this
14 meeting?

15 MR. BOTTORF: Well, he pointed at me, so I
16 spoke.

17 DR. CARNEIN: My reaction to that is that I
18 would appreciate it if you would stick to factual
19 comments or questions for Mr. Martin, and let's not get
20 into another big discussion of this whole issue and how
21 dissatisfied we should be with the process.

22 I'm not dissatisfied with this process,
23 myself, speaking for myself. And I don't think there's
24 any member of the committee who has indicated, at least
25 up to this point, dissatisfaction with the process.

1 MR. BOTTORF: Well, I'm not speaking for you.
2 I'm speaking for myself.

3 DR. CARNEIN: Fine.

4 MR. BOTTORF: You can make your comments on
5 the record later.

6 DR. CARNEIN: Are you going to meet with the
7 County Commissioners as part of the process?

8 MR. CRYSTALL: It's set up for 10 tomorrow.

9 MR. BOTTORF: Well, 10:00 is the public
10 meeting. But afterward --

11 MR. CRYSTALL: Right, afterwards?

12 MR. BOTTORF: I wouldn't have a problem with
13 it. I haven't had any confirmation of it, but I don't
14 think there would be a problem.

15 MR. CRYSTALL: I was going to confirm it with
16 you after this.

17 MR. BOTTORF: Okay. No problem. I do have a
18 direct question, if I may continue forward?

19 MR. MARTIN: So the answer is yes? Can we
20 pause for a moment and Ms. Lamey had a clarification.
21 Gregg, when is that meeting? Is it going to be --

22 MR. CRYSTALL: Well, we usually go to County
23 Commissioners meeting, and it usually lasts a half hour
24 or so. And then after that, we would probably -- they
25 would probably be willing to speak with you right after.

1 that public party. Whether you guys open it to the
2 public or not is your call.

3 MR. BOTTORF: Yeah, I don't -- we're pretty
4 easy going down there. We'll do what we need to do to
5 -- what do I want to say -- accommodate you.

6 MR. CRYSTALL: Dan had some concerns about
7 not having a full house and stuff like that.

8 MR. BOTTORF: A full house?

9 MR. CRYSTALL: He doesn't want it to be a big
10 circus or anything.

11 MS. LAMEY: Why don't you just have it after
12 your regular meeting?

13 MR. CRYSTALL: It is going to be right after.

14 MS. LAMEY: No, but I mean still open to the
15 public.

16 MR. CRYSTALL: It's strictly up to the
17 commissioners.

18 MR. BOTTORF: I can only speak for myself;
19 that would be fine with me. Now, a direct question, if
20 I could, to Bob. Bob, in my comments on your draft
21 final -- or on your interim report, I wrote to you
22 asking if you could work -- in your final report, if you
23 could look into finding out, first of all, if we can
24 find any Kilsdonk documents.

25 And the reason they're important would be,

1 for example, you remember a letter from Frank Vavra from
2 EPA, who was responding to concerns from the A.I.R.
3 group that there may be chemicals buried on this site
4 that were not discovered originally, for one reason or
5 another, that may, indeed, be in there.

6 In any case, I think there's some evidence --
7 and I can go into that evidence, but I won't at this
8 time, but there is some evidence that some chemicals,
9 some important chemicals may have been missed in the
10 initial investigations on this site.

11 When Mr. Vavra did his report, he mentioned
12 that he had looked through all the Drake documents and
13 found that the manufacture of those chemicals was not to
14 be found in those documents.

15 A good example would be pentachlorophenol and
16 silvex, which were found on site, but were never found
17 in any of the production documents from Drake.

18 I guess my question to you is, have you been
19 successful in locating any Kilsdonk documents from 1948
20 to 1962 or Pfister chemical documents that would shine
21 new light on that situation?

22 MR. MARTIN: The short answer to that is I'm
23 working on that. I'm working on that with Wayne
24 Walters, our regional counsel, to get the administrative
25 records certified for purposes of the ombudsman final

1 report.

2 In fact, this afternoon, I'm going to want to
3 spend some time in the repository, researching for those
4 documents among others. So it's being worked on.

5 MR. HARNISHFEGER: Bob, I have a couple
6 comments. Mr. Vilello raised an issue about comments
7 and inability for people to get to Williamsport and so
8 on and trying to put things in terms that everyone can
9 understand.

10 There was a document, I think it's dated
11 February 6, and I believe it's in the repository, where
12 the main concerns in very plain language raised by the
13 peer reviewers was given -- was responded to by EPA, I
14 think, again in very plain terms.

15 And so that is available, and I think you can
16 take a look at that. There's been much discussion about
17 coupling and what's coupled and what's not. The only
18 thing I can say that is if Congress, at the time that
19 this legislation was going through, wanted to couple an
20 ombudsman report or peer review workshop report to the
21 final action, they could have easily done that.

22 That could have been explicitly stated as a
23 requirement, and it was not done. So, you know, from
24 the standpoint of democracy and if Arlen Specter wants
25 this and whatever, that would have been during that

1 process when that law was going through, he was
2 certainly a member of Congress in the Senate, and that
3 could have been pushed for. I guess it wasn't.

4 MR. VILELLO: Well, I agree with that. But
5 if it was going to be uncoupled, then this city and this
6 site shouldn't have become political football. I mean,
7 it just appears that we're being used, and I don't like
8 it.

9 And I don't disagree with necessarily the
10 decisions that have been made. It's just like Rusty
11 said, the way the information has been delivered and the
12 way the reports and everything, the whole process has
13 left the public in the dark.

14 And there's a response time and everything.
15 But like today, this meeting is taking place 24 hours
16 before the real startup. Well, this should have been a
17 month and a half ago.

18 And it's the whole schedule with the
19 conflicting of the separate issues, the critical
20 decision makers are on one time line, the reports and
21 everything else are on another time line, and maybe a
22 process -- Congress decided that process, but we can
23 disagree with it.

24 MR. MARTIN: Well, if I could add a point of
25 clarity. When Congress enacted the law creating the

1. Office of Ombudsman, that was done in 1985, and it was
2. done in a law known as the Resource Conservation
3. Recovery Act, which deals with operating facilities that
4. generate hazardous waste.

5. At that time, the ombudsman process did not
6. deal with the superfund process. EPA decided, in about
7. 1988, to expand the ombudsman process to include not
8. only what we call RECRA concerns, but superfund concerns
9. as well.

10. So to be fair, Congress never really passed
11. on the issue of whether the ombudsman process should be
12. coupled with the superfund decision-making process.

13. MR. HARNISHFEGER: But if someone would have
14. wanted it back at that, I mean, certainly the process of
15. ombudsman has a history and government that was not
16. unknown to them that could have included it.

17. MR. MARTIN: Any person was free, obviously,
18. to go to Congress and make that policy argument.

19. MR. HARNISHFEGER: Right. Or any of the
20. lawmakers.

21. MR. MARTIN: Yeah. And I do think it raises,
22. obviously, a very important policy issue for EPA,
23. besides the Congress, to consider it.

24. MR. CRYSTALL: I understand there's a pushing
25. of Congress right now to expand the authority of the

1 ombudsman's office and to actually, if not specifically,
2 but to kind of include it in the decision-making chain
3 in EPA.

4 MR. MARTIN: Yes, that's true.

5 MR. CRYSTALL: It's being initiated by the
6 gentleman from Michigan, I believe.

7 MR. MARTIN: Missouri.

8 MR. CRYSTALL: Missouri.

9 MR. MARTIN: Correct. That's true. I also
10 wish to make a point that EPA is not entirely
11 unresponsive to the ombudsman process. There have been
12 ombudsman cases which involve incineration at superfund
13 sites, and ombudsman reports have been filed with the
14 Agency, and changes have been made, sometimes in
15 midstream.

16 And it's important to recognize that the
17 ombudsman process can begin halfway into, in some cases,
18 the decision-making process at a superfund site. And
19 then I complete my process, in some cases, while the
20 Agency superfund program is trying to run theirs.

21 MR. VILELLO: Maybe -- I mean, and it's not
22 going to help us here, but maybe in the future,
23 especially with a site like Drake where you can spend
24 \$80,000 a day, the process should start the day EPA
25 declared the state a superfund site, because I think if

1 this process was explained better 14 years ago, we
2 wouldn't be in this room today. That site would have
3 grass on it right now.

4 MR. BRAVARD: My name is Robert Bravard. And
5 this instance, I'm speaking for myself. This process
6 did start that way 14 years ago. I attended meetings
7 for the general public way back at the beginning when
8 the room was filled with people from EPA, and they
9 practically had to go out in the street with ropes to
10 get citizens of Lock Haven in to listen to any of this.

11 Furthermore, the initial process that was
12 indicated for the Drake site was protested by the Lock
13 Haven City Council and turned down, initially.

14 The fact is, the superfund law was crafted,
15 if you go back to the legislative history in Congress,
16 with the realization that you start this process, you
17 turn it over to the best scientific minds you have, and
18 once the rule of decision is made and it goes forward,
19 it goes forward, and there is no legal recourse because
20 Congress set up the law that way because they realized
21 after the fact, when something was being done is when
22 various kinds of controversies arise, many of them based
23 on issues which may not be germane to the specific
24 situation. Is that a fair statement, Gregg?

25 MR. CRYSTALL: Yes.

1. MR. BRAVARD: And this is independent study
2. going back to the legislative record on my part.

3. MR. WELCH: Mike Welch. I got a question,
4. maybe for clarification, but we're going to have an
5. opportunity to talk with you as the State of
6. Pennsylvania in a little bit.

7. But our understanding of the ombudsman
8. process maybe needs some clarification from you. As I,
9. as a representative of the State, have understood it, it
10. wasn't to make a decision of technicality whether
11. something was safe, unsafe; it was more to respond to
12. whether people's concerns and complaints were being
13. addressed and responded to; is that correct, I mean,
14. that was a basic underlying thought that I had?

15. MR. MARTIN: Well, the latter point is
16. certainly correct. As to the former point which deals
17. with technical issues, ombudsman cases in the past, and
18. this case is no exception, have dealt with technical
19. points as well.

20. MR. WELCH: From the aspect that you would
21. make the technical decision, though?

22. MR. MARTIN: No, let me make that clear; I am
23. not a decision-making official of EPA, so no, I make no
24. technical decision.

25. MR. WELCH: So in the final report that will

1 be coming out, since there's been a time period lapse,
2 and a lot of the issues that were raised in the draft
3 have since either had responses sent to you or have been
4 responded to in some sort of manner, will those
5 responses be included as closure for those; isn't that
6 the way the final is put together?

7 MR. MARTIN: On the point of closure, let me
8 make it clear; I can make an observation on a report
9 that the region, let's say, or the State or EPA
10 headquarters has been fully responsive to an issue.

11 But the petitioning parties, the complaining
12 citizens, determine in the final analysis whether
13 closure has been reached.

14 MR. WELCH: I didn't mean closure as far as
15 satisfaction. I mean, that it wasn't left open that
16 this was claimed to have happened and that there was an
17 investigation, and this was the report, not that it was
18 right or wrong, but that will be in the final document?

19 MR. MARTIN: Yes, together with any
20 appropriate comments provided by the Region, the State.

21 MR. WELCH: Thank you.

22 DR. CARNEIN: If there's a problem during the
23 project, in other words when the project is in full
24 operation, if, for example, some people in the community
25 felt that they had more concerns that relate to the

1 operation that weren't being addressed, can they then
2 reopen the ombudsman process, come to you with more --

3 MR. MARTIN: Let me respond to that question.
4 The aggrieved or petitioning parties determine when they
5 no longer wish the existence of the ombudsman. And
6 their involvement does not preclude the involvement of
7 other citizens who may also have concerns.

8 DR. CARNEIN: So essentially, the ombudsman
9 process will really almost never end?

10 MR. MARTIN: Theoretically.

11 DR. CARNEIN: So in a way -- I mean, I don't
12 want to put words in your mouth, but in a way, you might
13 never have a final report on this site, I mean, a true
14 final report that covers all the concerns that people
15 have?

16 I mean, what I'm trying to say is this
17 process could go on for the next hundred years, and we
18 would still have people who might be dissatisfied
19 with --

20 MR. MARTIN: You and I won't be here.

21 DR. CARNEIN: Right. I guess what I'm trying
22 to say is that no matter what you do, there could still
23 be concerns that have to be addressed?

24 MR. MARTIN: That's correct. However, I
25 think after review of the final report, and there will

1 be one at the end of this month, with the exception of
2 the additional comments and two or three discrete issues
3 that you had asked ask for, there will be a final report
4 by the end of this month.

5 That does not preclude additional concerns
6 being raised, let's say, during the course of operations
7 at the site. However, the merit of doing the formal and
8 final report is that you do capture most of the
9 significant issues that need to be addressed.

10 DR. CARNEIN: Right. But there could be
11 later interim reports and final reports if new issues
12 were to --

13 MR. MARTIN: That's premature to say. I
14 can't say that.

15 DR. CARNEIN: I'm just saying there could be.
16 Theoretically, it's possible that that could happen?

17 MR. MARTIN: Theoretically, that's possible.
18 That's not been the case yet, but I've only been doing
19 this function for five years.

20 MR. CRYSTALL: Bob, I'm going to step out on
21 a limb and assume that A.I.R. is never going to be
22 satisfied with responses. Is there a point in time
23 where you go to the people who have petitioned you and
24 say this is as far as I see it, this issue is closed,
25 and is doesn't matter that you don't agree anymore; is

1 that an option that happens as well, or is it still open
2 as long as the petitioners have a problem with it, open
3 in terms of your involvement?

4 MR. MARTIN: Let me be clear, there have --
5 not discussing this case -- but there have been other
6 cases in other communities and other regions where I
7 have felt that I have done what I can in terms of
8 ensuring responses to a complaint, and I'm very clear on
9 that point. However, I have never said I've done
10 everything I can or all that can be done.

11 MR. CRYSTALL: Okay.

12 MS. LEE: I was just curious how the
13 technical scientific information is evaluated?

14 MR. MARTIN: The question is how does
15 technical and scientific information go into this
16 project?

17 MS. LEE: From either side, you know, whether
18 provided by EPA or outside, you know, assertions
19 provided by an outside -- how is that evaluated?

20 MR. MARTIN: First, I independently evaluate
21 what is submitted to my office. In other words, I do
22 read what people send me.

23 MS. LEE: Sometimes it is very technical.

24 MR. MARTIN: I understand that. Secondly,
25 after reading what people send me, I do consult with a

1 number of EPA resources, the Office of Emergency
2 Remedial Response, I deal with; that's our national
3 superfund program.

4 I do communicate with our regional staff and
5 offices. And there are times when I've worked directly
6 with an organization known as the Environmental Response
7 Team, which is based in Edison, New Jersey. And they
8 have a national capability for technical expertise at
9 superfund sites.

10 MS. LEE: You would have to seek them out;
11 it's not automatically referred to, like, a panel of
12 technical experts?

13 MR. MARTIN: That's correct. There's no
14 automatic referral mechanism to panels.

15 DR. CARNEIN: Is the Environmental Response
16 Team independent of EPA or is that part of EPA?

17 MR. MARTIN: They are part of EPA.

18 MR. CRYSTALL: In fact, we've had ERT assist
19 us in developing on the air sampling scenario and other
20 -- they reviewed the risk assessment as well. They're a
21 branch in EPA headquarters.

22 DR. CARNEIN: One of the concerns I have with
23 your draft final report was that I didn't see references
24 in there to peer review of some of the things that you
25 said.

1 And a concern I had was that throughout this
2 process, EPA pretty much, I thought, had to have peer
3 review of a lot of the things that they do. I mean,
4 their reports all have references in them, formal
5 references to published literature to recognize
6 scientists who've made studies along these lines.

7 But in your report, I didn't see that kind of
8 thing. And I was concerned that maybe the standards
9 that you were using for many of the statements that you
10 made were different from those of EPA in general. Can
11 you respond to that?

12 MR. MARTIN: Yes, that's a very fair
13 question. Let me be clear that not every report, for
14 example, EPA issues, is subject to peer review. There
15 are some cases, particularly at superfund sites in which
16 we do subject our risk assessments to independent peer
17 review by a panel of scientists.

18 But I think it's a fair statement that not
19 every report is subject to peer review that EPA
20 generates, but probably most. There's an assumed level
21 of expertise behind the report which is issued by EPA.

22 In the case of my report, certainly this
23 final report, it will be -- will have contributions from
24 not only regional offices, but also headquarters as
25 well.

1 DR. CARNEIN: I guess what I meant was when
2 you look at an EPA report, usually if they say something
3 factual, it will have a -- it's like a scientific
4 report, it has a reference.

5 And you can go to the reference section in
6 the back of the report that says where that -- in other
7 words what they're basing that on, and you can go look
8 it up if necessary. And I didn't see that in your
9 report. I didn't see a list of references.

10 MR. MARTIN: That's correct. And that list
11 of references or what I term "findings of fact," does
12 not appear until the final report.

13 DR. CARNEIN: Okay.

14 MR. MARTIN: I hope that's responsive.

15 DR. CARNEIN: I thought that might be true,
16 but I -- and I think I asked you that question in
17 numerous correspondence.

18 MR. VILELLO: Can I ask one more question
19 before we wrap up? There's also been claims that your
20 previous reports have been censored.) Have you heard
21 those claims, and can you address that?

22 MR. MARTIN: Have I heard the arguments that
23 my previous report has been censored?

24 MR. VILELLO: Yes.

25 MR. MARTIN: Yes, I have heard those. I can

1 confirm that the May 8 interim report was held. I think
2 I dealt with that in a draft final report and explained
3 what had happened.

4 EPA decided to hold that report because they
5 felt there were factual errors and misstatements of fact
6 in the report. Upon review, what I call remand, in
7 other words the assistant administrator for EPA, Timothy
8 Fields, remanded my interim report to me for necessary
9 corrections.

10 I found at least two errors in the interim
11 report, which I addressed in the draft final report, a
12 statement by Mr. Kostmayer that was attributed to him
13 and which should not have been. And I believe there was
14 also another technical error on the test for dioxin at
15 the site, and that was also addressed in the draft final
16 report.

17 MR. VILELLO: So you're comfortable with
18 what's taken place and with the final report?

19 MR. MARTIN: I'm comfortable with the process
20 I need to use to bring this to closure.

21 MR. CRYSTALL: If I can just elaborate a
22 little bit more. There was a Feed of Information Act
23 request to release Mr. Martin's May 8 interim draft
24 report.

25 And our office of regional counsel and

1 management in our region in Washington did black out
2 certain lines of that report before they released it to
3 CNN. And that's the copy that got out to the public
4 first.

5 But I do believe that the entire May 8
6 report, uncensored, was one of the attachments that was
7 put into the repository with the August -- the next
8 draft.

9 And if it's something that you haven't seen,
10 we can get you a copy of that. Same with you, Rusty, if
11 you haven't seen that not blacked out.

12 MR. BOTTORF: We got it.

13 MR. CRYSTALL: So that is available.

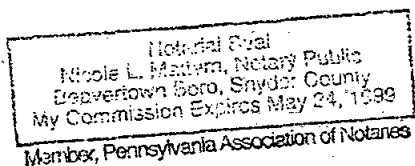
14 DR. CARNEIN: Mr. Martin has informed me that
15 he has to leave. Are there any other questions from
16 members of the committee or City Council? Thank you
17 very much for coming.

18 MR. MARTIN: Thank you, Dr. Carnein.

19 (The hearing concluded at 1:07 p.m.)
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CERTIFICATE

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings and that his copy is a correct transcript of same.



Nicole L. Mattern
Nicole L. Mattern
Notary Public

My commission expires
on May 24, 1999

LAWYER'S NOTES

[illegible]

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